

AGENDA  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Monday, January 13, 2014**

SUBJECT	DESCRIPTION	PRESENTER
Introduction	Committee Page Kaitlyn Parks and Interns Tyler Kelly and Sean Schupack	Senator Lodge
<b>Docket No.</b> <a href="#"><u>11-1002-1301</u></a>	<b>Idaho State Police Pending Rules</b> Rules Establishing Fees for Service - ID Criminal Justice Information System	Dawn Peck, Manager Bureau of Identification, Idaho State Police
<a href="#"><u>11-1001-1301</u></a>	<b>Idaho State Police Pending Fee Rules</b> Rules Governing Idaho Public Safety and Security Information System	Dawn Peck
<a href="#"><u>11-1101-1301</u></a>	<b>Idaho State Police Pending Rules</b> Rules of the Idaho Peace Officer Standards and Training Council	William Flink, POST Administrator, Idaho State Police

COMMITTEE MEMBERS

Chairman Lodge  
Vice Chairman Vick  
Sen Davis  
Sen Mortimer  
Sen Nuxoll

Sen Hagedorn  
Sen Lakey  
Sen Bock  
Sen Werk

COMMITTEE SECRETARY

Carol Deis  
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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, January 13, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock, and Werk

**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:30 p.m.

**INTRODUCTION** **Chairman Lodge** introduced the Committee's Page **Kaitlyn Parks** who then gave a brief bio of herself. Intern **Tyler Kelly** also addressed the Committee with his bio.

**PASSING OF GAVEL:** **Chairman Lodge** passed the gavel to **Vice Chairman Vick** to present the Rules Review.

**DOCKET NO. 11-1002-1301** **Idaho State Police Pending Rules**  
**Rules Establishing Fees for Service - Idaho Criminal Justice Information System - Dawn Peck**, Manager Bureau of Identification, explained this rule will include terms defined in Section 67-3001, Idaho Code. This rule will also provide a procedure for the expungement of a person's criminal history record, for the transmittal of criminal history arrest fingerprints, and for a person to contest to the accuracy and completeness of a criminal history record in the database of the Bureau of Criminal Identification. Definitions have been added that are used in the criminal history court dispositions. These include acquittal, criminal summons, dismissal, and expunge to assist with the understanding the expungement statute for criminal history.

**Senator Werk** questioned the definition of expunge which means erasing. It would seem that a person could have their record expunged, but it is discoverable. If an individual is making out an application for a job, even if they have had their record expunged, that record is still discoverable somewhere.

**Ms. Peck** explained the procedure for expungement of a record in the repository and this rule outlines the procedure. In code it explains that the record can be expunged if the individual was not charged with the crime within one year or if they were acquitted of the crime.

**Senator Werk** clarified that the erasing of records would have to have the statute changed to indicate that the records are no longer present. **Ms. Peck** responded that a statutory change would be needed. If they expunge a record in the Idaho Criminal History Depository when the record is erased, it is gone. If someone was to do a fingerprint based background check for employment the record would not be in the database. A pardon is different and is addressed in a different part of the statute.

**Senator Bock** stated that an expungement should treat the individual, who was convicted, as if the crime had never been committed. If they fill out a job application they should be able to say, "yes, I have never been convicted." **Senator Bock** asked if **Ms. Peck** could explain the differences in an expungement and a withheld judgement. **Ms. Peck** explained that in the Idaho Criminal History Depository the documents are fingerprint cards and when they get the disposition from the court they will destroy the records completely. That does not mean that the record would not be available at the court or at an on-line company that does background checks on individuals. The on-line companies buy databases and they never update those files. If an individual has a withheld judgment they must go back to the court and get a dismissal. Then the ISP Information System will show it as a non-conviction; but it will show in the history that there was a withheld judgment along with the dismissal date.

**MOTION:**

**Senator Werk** moved to approve **Docket No.11-1002-1301** . The motion was seconded by **Chairman Lodge**. The motion carried by **Voice Vote**.

**11-1001-1301**

**Idaho State Police (ISP) Fee Rules**

**Rules Governing Idaho Public Safety and Security Information System - Dawn Peck**, stated this rule amends the fees charged to users of the Idaho Public Safety and Security Information System (ILETS). This fee increase was approved by the ILETS Board, a six-member multi-jurisdictional board that establishes policies relating to the management and operations of the ILETS System. The fee increase will fund a backup site and a viable dedicated/secure funding stream to support the system, as the funding was deemed insufficient to sustain the system. The ILETS Annual Budget (attachment 1) details the projected annual operating cost of the system, incorporating the redundant backup and communication resources, staffing and replacement resources which total \$3.1 million dollars.

**Senator Hagedorn** stated according to this budget your agency is tripling the charges for the usage of the ILETS. Is the basis of tripling the access fees to the counties based upon the ILETS projected budget? **Ms. Peck** replied the Board is requesting in this budget an annual additional funding of \$700,000 to be born by the users of the system. ISP would obtain the other half of the funds. **Senator Hagedorn** clarified were the counties represented before the Board in determining these usage fees. **Ms. Peck** replied that the Board has two chief of police and two sheriffs who conferred with their constituency and presented the proposed budget at their association meetings before the Board voted to proceed with these increases. Because this is such a crucial system the counties came back in support of the increased costs.

**Senator Mortimer** stated that in reviewing the projected annual budget there are two large items \$505,000 for communications back-up redundancy and \$300,000 for servers, etc. (three year rotation). The communication redundancy is that a hardware one-time capital expenditure? **Ms. Peck** explained the communications fees are broken out below for the various communications, such as phone line installation which would be a one time expenditure of \$348,250. There would be an annual usage fee for those communication lines of \$505,000. The servers will be placed on a three year rotation.

**Senator Davis** stated he can see a need to make adjustments to the system. Present day businesses are getting around this sort of capital expenditure outlay by leasing Cloud based solutions. This expenditure seems to be contrary to the best management long term of technology dollars. Could you explain what ISP's privacy limitations would be that might preclude them from using the Cloud alternatives like businesses to avoid this substantial capital expenditure? **Ms. Peck** explained that there are security limitations that ISP must adhere to in their technology upgrades. They have looked into trying to utilize some Cloud computing but have not found one with the correct security.

**Michael Kane**, representing the Sheriff's Association, said the ISP, sheriffs and chiefs have been working on an attempted solution for the ILETs for a couple of years. The ILETs has been operating on a shoestring and it is used not only by ISP but the local law enforcement agencies, including the Attorney General. This system must be upgraded and they are about three years behind schedule in that process. ISP must pay for a redundancy system and that is reflected in these budget numbers.

**Senator Davis** stated that he will not be voting in favor of this rule fee until he has a better understanding of ISP's privacy issues that would preclude them from using the Cloud as a resource. He would need to know that there are not lessor alternatives available in the marketplace so that ISP can continue to provide this critical resource to the sheriffs but not at the numbers that are presented in this budget.

**Vice Chairman Vick** explained that the Committee will hold **Docket No. 11-1001-1301** and place it on the Friday agenda to allow response regarding the communication costs in the ILETs proposed budget.

#### 11-1101-1301

#### **Idaho State Police Pending Rules**

**Rules of the Idaho Peace Officer Standards and Training Council - Rory Olson**, POST Deputy Administrator, advised that POST is responsible for minimum employment training standards for 5,700 law enforcement personnel serving the criminal justice system in Idaho which include law enforcement, detention, state correction, state probation and parole, juvenile detention, juvenile probation, juvenile correction, and misdemeanor probation officers.

The proposed rule defines and clarifies the character qualifications and disqualifications in the area of moral turpitude, drug use, and criminal record. Allows students who are applicants to attend college training programs to appeal denial of application to the POST Council Hearing Board.

**Senator Davis** questioned the language of the definition under Section 02. "May Be Rejected" on page 30. Aren't we trying to objectify the standards so that POST satisfies the Supreme Court? It is the broad language "such as, sex act or sex related act" that might undo the definition of the standard. **Sheriff Raney** stated that by definition law enforcement officers have to have a level of credibility in enforcing the law and in the courts that normal individuals don't possess. How do you define this moral conduct? What is the appropriate level of community standard of a peace officer? **Sheriff Raney** answered that the language of "such as" was meant to be the guiding language. Keep in mind that there is a process when they make a decision to hire a candidate and he is turned down because of some sex act that is in the gray area, they would have the appeal opportunity to come before the Hearing Board and then the Council. **Senator Davis** responded the reason we are giving these standards is to objectify the standards so that they satisfy the supreme court. The supreme court wanted to minimize the judgment call hiring practices. Again you are falling back on we will use our judgment. If you look at the phrase a "sex act or sex related act, such as" that language can stand by itself and it is very subjective to the hiring authority. **Sheriff Raney** responded that the Council went from no definition to as accurate a definition for the those standards.

There is subjectivity to the definition which is not very different than a judge often has to administer in a court case. Finally, the Council was aiming for the best language for the appropriate level of community standard. There is a gray area in the language to leave some latitude to the sheriff, director or the administrator to make the determination to hire a prospective candidate.

**Senator Hagedorn** stated that there is language in 02 and 03 on page 30 stating "may be rejected", "may be accepted", there is nothing in these paragraphs that gives finality in this language. **Sheriff Raney** replied that is correct.

**MOTION:**

**Senator Hagedorn** moved to approve **Docket No.11-1101-1301** . The motion was seconded by **Senator Bock**. **Vice Chairman Vick** then called for a **Roll Call Vote** for **Senator Hagedorn's** motion. **Chairman Lodge**, **Vice Chairman Vick**, **Senator Hagedorn**, and **Senator Bock** voted **aye**. **Senator Davis**, **Senator Mortimer**, **Senator Nuxoll**, and **Senator Lakey** voted **nay**. Senator Werk had left the meeting. The motion failed.

**PASSING OF  
GAVEL:**

**Vice Chairman Vick** passed the gavel back to **Chairman Lodge**.

**ADJOURNED:**

There being no further business, **Chairman Lodge** adjourned the meeting at 3:04 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

MINUTES  
JOINT MEETING  
**SENATE JUDICIARY & RULES COMMITTEE**  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**

**DATE:** Thursday, January 16, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW02

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline and Ringo

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the Committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** thanked all in attendance and called the meeting to order at 1:30 p.m. She mentioned that the Committee has been working on this information with the representatives from the Council of State Governments since June of last year. Those individuals have come to Idaho every other week since last June, looked through 570,000 documents and visited with people from all over the State.

**PRESENTATION:** **Marc Pelka, of Justice Center Council of States Government (CSG)**, started his presentation by thanking all of the members of the Senate and the House who had been involved in this work, and he appreciated the fact that they made this issue a priority. He stated that it had been a long time since the CSG had the privilege of making their presentation to such a large group of state lawmakers, representatives from all three branches of government, and criminal justice system stakeholders. The CSG noted the level of dedication and attention to these issues since their first visit to the State. His job before the Committee was to summarize all of the work that has been done since they first began in June of 2013 that has led to the release of the CSG's report.

**Mr. Pelka** pointed out that there are a number of people on his team that have worked with him on this project and report. He went on to mention some of the people and the locations they work at around the country. They are all part of the CSG, which is a non-partisan and non-profit organization representing policy makers from all three branches of government, at all levels of state government, focusing on criminal justice issues. The CSG got its start from policymakers around the country who voiced concern over the complexity of the criminal justice issues growing in their states. CSG has found that all of the issues involved in the criminal justice system have helped form what they do and how they do it, deepening the analysis of the critical issues.

Idaho competed for the Justice Reinvestment Grant which is eligible to all states and is available on a non-partisan basis. Its purpose is to identify data analysis on those things that are driving trends in the growth of correctional spending and recidivism, while also looking at ways to reduce spending and reinvesting it in areas that will increase public safety. The grant is funded by a public partnership between the U.S. Department of Justice's Bureau of Justice Assistance (BJA) and the Pew

Charitable Trusts. There are 17 other states (large and small) that have worked on this project, reflecting a broad range of issues across the country and a wide array of diversity, but all coming together with an interest in understanding the key drivers in the criminal justice system. What sustains the work is the interest generated from the leaders in all three branches of government who are involved in this work.

**Mr. Pelka** declared that recidivism has raised the profile of these issues. The second fastest growing budget item in state government is corrections, with the number one being healthcare. Policymakers are seeing that constituents are demanding a better return on their investment for the public safety dollars being spent, and recidivism has been a key area in this effort. Recidivism is defined in a number of different ways, but he defined it as the number of people released from prison who return within three years after their release. In spite of the significant increase in spending on corrections there's been a stubbornly high rate (40 percent) of people released from prison and retuning within a 3 year period. This rate has prompted constituents to ask policymakers what more can be done to reduce the amount of recidivism in the State.

It has been found that when spending for corrections has increased, many states have seen reductions in their recidivism rates and crime reduction efforts. It has been positive in that states know more now than in any other time in history about what works to reduce recidivism. The literature has expanded and the knowledge of contributing factors has increased. The CSG released a report last year at the request of their sponsors to try to put together the big issues around what has been shown to work to reduce recidivism. The biggest factor that came out of the report is to focus the resources on the highest risk offenders.

The reason the CSG has done this study for Idaho, **Mr. Pelka** said, was due to a joint resolution the Legislature passed to commission this effort and report. This resolution had been approved last year and their work began, as previously stated, in June with their first presentation to the Governor and others. He said that the CSG has received support not only from Senator Lodge, Representative Wills, and their committees, but also from other individuals, groups and associations throughout the State.

He went on to say that his presentation is an overview of Phase 1 of the program which is the result of the input from stakeholders, the analysis of data gathered, looking at the behavioral health system (treatment capacity) and other policy options. When all is said and done, they are left with a lot of reports and data that needs to be analyzed, and that ultimately provides state policymakers with a framework to address the goals that have been brought up during the research process and that brought the CSG to the State in the first place. Within the content of the report (page 4), it shows 3 different strategies for addressing challenges in the criminal justice system along with 13 policies that can help address them.

**Mr. Pelka** pointed to the breadth of the data that had been submitted in compiling the report. He wanted to make it clear that they were not just going off of annual reports and drawing conclusions from them, but they received specific case-level data from probation and parole, from the Department of Corrections and prisons, as well as other agencies and sources. The CSG looked at all the data gathered across the systems since it was important to recognize that the criminal justice system is interconnected across levels of government so that unless the data is collected from everywhere then key parts will be missed.

He mentioned the various parts of the State they had visited in gathering their information, and the groups they were able to meet with. The CSG group came to these meetings with the challenge of addressing what is driving the growth in correction spending. Between 2010 and 2012, Idaho experienced the second largest growth in its prison population; during this same period 28 states saw a reduction in their prison population numbers. They also looked at incarceration rates; Idaho also saw an increase. This prompted the CSG to look at historical growth patterns. By simulating the projected increase in prison population they could see that over the course of the next 6 years the system is expected to grow by an additional 16 percent, and the cost to accommodate that growth is significant.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

**QUESTIONS:**

The discussion was then opened up to the entire audience, some were known to the Committee Secretary, while others were not.

**Senator Lakey** was curious about the stakeholders that were worked with and wanted to know if the data looked at was primarily prison focused on the State level, or did they also look on the county facilities and how they interact and how these recommendations affect that. **Mr. Pelka** responded that they had submitted a survey to sheriffs statewide which gave them some crucial data on the use of delegated jail time where people could be housed for parole violations and other issues. They were limited by the lack of statewide jail data, only getting information from Ada County, but it did help in understanding some of the issues.

**An Audience Member** asked for clarification on crime rates in the states. Idaho is starting out with a low crime rate, but for our state we are looking at a high prison recidivism rate. Is there a comparison for this rate? **Mr. Pelka** explained the 53 percent is the recidivism rate. These are the individuals released from prison to parole who return to prison within three years. Recidivism rates vary across the State and it is not always an apples to apples comparison because of different measures. He said the definition the CSG likes to use is the return to prison over a three year window. The national average for this occurrence is 40 percent over that time period. A number of factors explain Idaho's rate and you are correct to mention the importance of recidivism. That has been a real focus as the CSG has looked at Idaho's system.

**An Audience Member** asked if the CSG had been able to get information on the prison population that could tell the percentage that have drug addiction and mental health problems. He commented that some of the research he had done in this area in trying to explain the statistics is either incomplete or not available. In explaining the reason for the high recidivism rate the research seems to indicate a problem in the areas of addiction and mental health. Some of the statistics received from North Idaho Juvenile Treatment Facility in Lewiston indicated that over 70 to 80 percent of their inmates were being treated for addiction problems or mental problems and close to 80 percent were under psychotropic medication. When programming solutions are approached are there specific recommendations along the line of mental health and substance abuse.

**Mr. Pelka** said that the report points out the challenges they experienced matching the case level criminal justice data with mental health data. There was more information on the substance abuse population because that is one of the key indicators in the risk assessment information that the team reviewed. On page 16, Policy 1b, bullet three, looks at the variety of needs of individuals on probation and parole supervision.



**Mr. Pelka** praised the Substance Use Disorder (SUDS) program for delivering substance treatment, but it does not address the mental health and co-occurring needs of the population. The working group was asked to complete a gap analysis of mental health needs, substance use needs, criminogenic (criminal thinking) needs, and the estimate of the infrastructure in place to deliver programming. There is a gap between what exists in terms of needs and delivery. Reinvestment into treatment will be based on the assessed needs that exist in the system, which will be more inclusive of the mental health and co-occurring needs. That can be accomplished by hiring probation and parole officers who specialize in mental health case loads or having navigators to work with individuals with mental health needs.

**Representative Woods** stated that one of the core problems they found was that so often individuals with mental illness were medicating themselves with drugs or alcohol. The National Alliance for Mental Illness (NAMI) association working in the State helped on this issue. The community based treatment is something the State has been piloting and the CSG took a look at this in their research. She wondered if the mental health aspect is something the CSG can give them direction on for resolving this issue?

**Mr. Pelka** replied that looking at the mental health of individuals in the criminal justice system is an effective assessment. Prior to sentencing in our state everyone undergoes a Global Appraisal of Individual Needs (GAIN) assessment. This gives information for the types and level of need that can help the State deliver programming that is responsive to those needs. Individuals involved in the criminal justice system with mental health needs understand the risk that they pose for recidivism.

The resources do not currently exist to deliver treatment to everyone who needs it. It is important to prioritize the highest criminogenic risk population with the highest mental health needs, making sure they are getting treatment. Policy 1b will bring together state agencies and the supreme court to look at the population and the capacity that exists out there because it does seem to vary by where you are in the State. Different counties and districts have had greater success in meeting the needs of the population. There is much more to go to fill that gap. In the report CSG tried to underscore the behavior health need issues in the State.

**Representative Woods** commented that one of the positive points she heard at the end of Mr. Pelka's presentation on Wednesday was the need for the probation and parole officers to have training in handling the mental health individuals. Possibly they could redirect some of those offenders to other avenues of success other than putting them back in prison. The crisis centers could deal with the people with mental health problems better than putting them back in the hospital or in jail.

**Mr. Pelka** responded that one of the biggest challenges the State faces on probation and parole is the sheer number of people on supervision and the case load sizes. The officers wanted to do all they could to work with the populations and they are frustrated by the number of individuals on their case loads. There is a desire by them to be trained and to focus on offenders with the greatest needs. The mental health need must be included in the assessment of the needs of the population. It is not just the risk of re-offending, it is also the ability to be responsive to treatment and supervision.

**Michael Kane** stated that he was struggling reading Figure 8 in the report regarding the rates of failures. If he was reading the chart correctly, it looked like 41 percent of all riders fail. He asked if that is the take away we are supposed to get from this information? If so, did the CSG draw any conclusions about why that might be?

**Mr. Pelka** explained that it's important to note that 41 percent is the overall rate, and the rate of failure is different across the risk level. Riders deliver intensive treatment for people while they are inside the program. What matters a great deal is their transition to probation afterwards. Just as they found that the rate of the completion of probation merits attention, he thought it is also was important to look at the transition of a rider to a supervision period afterwards. When you look at the overall rider population you can see a relatively high share of an increased percentage of people who are low risk. He said it's known that those individuals do not, by that assessment, have those needs that can best be addressed by the rider program. It is important to prioritize the rider on people who have the greatest need and propose the greatest risk. It is important to look at the overall outcome for each of the programs. You can see some variation by the risk level.

**An Audience Member** asked if any of the recommendations from the CSG deal with redefining what is considered to be criminal behavior. Specifically in the cases when the State would choose to prosecute certain crimes, particularly felonies for violent crimes.

**Mr. Pelka** responded no they don't. In the working group there were discussions involving felony theft thresholds, which was an issue that came up yesterday. This threshold was not part of the report but is one that is of interest for further discussion. CSG was not able to do a whole review of the State's sentencing system, to be able to provide a credible behavior recommendation because the project slopes on the entire system itself. There is interest in looking at classification of felonies, misdemeanors, violations and issues of that nature, but in the report there will be no reclassification of felonies and misdemeanors or anything of the nature. CSG would recommend that the issue would be looked at in future studies. For the State of Michigan, where the CSG is working now, the determination was to include sentencing. The difficult part is the data and the review that is required to do what is needed in that area, and will hopefully be a topic for future studies here in Idaho.

**Representative Wills** stepped in to address the previous audience member's question by stating that through the study it did point out that crime and filing rates are not up. Even though prison rates are going up prosecutors are not filing more cases but different kinds of cases. Prison rates are going up because the people who they put on probation and are on parole have higher rates of failure and that is what is driving the prison population, not the number of cases that they have filed.

**Mr. Pelka** replied that the key part CSG looked at is at the front end of the system where the breakdown is relating to the sentences. CSG looked at the type of offenses and placement in terms of where people are sentenced from the court felony level. In their research they found that 84 percent are going to probation or a rider, but what matters most is what happens after that placement.

**An Audience Member** wanted to know with the CSG revocations for probation and felony did they do a breakdown as to what percentage of those are technical violations versus new crimes. **Mr. Pelka** answered CSG got that from a survey of violation recommendations from probation and parole officers, and roughly a quarter are condition violations, a quarter absconding, a quarter misdemeanor and a quarter are new felonies. There are variations across both of those types. The survey gave them the best indication of the difference between new criminal condition and technical violation. **The Audience Member** had a follow-up in asking about the revocations that seem to be higher than some other states and wanted to know if CSG was comparing apples to apples in terms of the reason for the revocations. Are the revocations similar in other states in the breakdown or are there new crimes being committed? He clarified by asking if the State's probation and parole officers are more efficient than other states or are other states being more lackadaisical in their approach.

**Mr. Pelka** replied that nationally about 50 percent of revocations are technical and 50 percent are new criminal conditions. When CSG looked at the revocation survey for a number of prior sanctions and pre-interventions they found there were approximately two prior cases before recommending a revocation from term. What makes Idaho different from others is the increased use of the rider program for probation violations and the ICC's CAP program for parole violations. There has been relative stability in probation revocations to term over the last five years.

The increase has been in probation revocations through the rider program, which is up by about 40 percent. That is driven by program needs in the community versus what is available in the institution. It is driven by the use of the administrative sanction or the lack thereof prior to recommending revocation. There is a whole range of offender behaviors and responses to those behaviors that contribute to the revocations from state to state. He argued that one thing that makes Idaho different is the increased use of the rider and the ICC CAP program for the parole violators.

According to the survey CSG did in 2013, 29 percent of probation revocations were technical, 23 percent were new misdemeanor, 25 percent were absconder, and 23 percent were new felony. For parole, 21 percent were technical, 24 percent new misdemeanor, 27 percent absconder, and 28 percent new felony. In the research CSG conducted, they found it would be important to look at the absconder for policy framework in an effort to address imposing tougher sanctions and responses to this group of offenders.

**An Audience Member** looked at the CSG figures presented and wondered if an individual is a two-time offender will they show up twice in the survey numbers. If he is a one-time offender he will show up once. Is there a difference in recidivism rate if you are a first time offender versus a second time offender?

**Mr. Pelka** explained these are all new cases admitted to prison. If an individual was admitted to prison twice in the same year they would appear up there. CSG reviews to see what percent of the individuals are new coming in and are second timers. They can control for that analysis that we have presented. Someone who has been admitted two or three times to prison will be higher risk by virtue of the scoring of their prior offenses or convictions. With each new arrest, new conviction and time in prison their risk level will increase.

**An Audience Member** noting the data presented, referenced the average time served at first parole for the different types of offenses and the time in between the parole and when the individual was actually sentenced. He wanted to know if CSG looked at the behavioral type programs that are offered in these settings and the timing of when those programs are offered. In other words, are we offering them during the fixed term portion of their sentence or are they offered later on during the indeterminate portion which might extend their time in the correctional facility.

**Mr. Pelka** replied that during the time of intake to prison everyone undergoes assessment and a treatment pathway is developed in response to that program need, and those are intended to begin on day one to address each of those criminogenic needs that are identified in the assessment. The goal being to get the individual ready by the end of the fixed term. There are delays in program delivery. When CSG spoke to the program manager in the Department of Corrections, they found that there are no wait lists for many of the programs that are offered, except for some special life classes involving sex offenders. As CSG worked with the various states in examining the efforts involved in correction and parole, they stressed to the policymakers the importance of gathering the crucial data to better understand what is driving the delays in the programs needed.

**Representative Wills** stated what this commission is attempting to implement is the first year of a five year program. While it is impossible to entertain all facets of the issues in the beginning, they will be starting at the point of probation and parole. Probation and parole are key because from that point is when the individuals will be going back out into society to the community based projects when they are released. He stressed the desire not to lose the forward motion in this five year phase-in process. Mental health is a huge issue and they must address it very quickly. What they are attempting to do this year is to get all stakeholders on the same page to address the most vital issues. By going through this process, it can save the State \$290 million over the five years by investing \$33 million. This is a data driven number, not just an estimate. The State can do far better than that when you start looking at the health insurance that we are paying out right now. Every one of these issues is costing the State a lot of money in the correctional institution; once they commit that felony or misdemeanor it starts costing the taxpayer money.

He asked how do we reduce the dollars we spend at the prison and still have efficiency and guard public safety? Never losing sight that public safety is the number one priority. Law enforcement, the Department of Corrections and other agencies have all done an outstanding job. He stated that anyone knows if you are given limited tools you will have limited application. There are a lot of tools out there that they think we can get going and using. The mental health issue is huge and right now we are institutionalizing many of those individuals. It is the goal to implement this program, get these individuals rehabilitated and back into society as productive members. He emphasized for people to not lose sight of this goal. He expressed enthusiasm for help that's been received from every single agency so far with so many coming together for the first time, and being receptive to overcome any of their issues to work with together as a whole.

**Senator Lodge** stated that what we can do up-front in the way of prevention will help save and change lives. One of her big concerns is to make sure that the children don't follow on the same path as their parents. We are looking at that beginning savings, but that should spread out over the welfare system, education system and some of the other programs we have that are not being as productive as they possibly could be. She noted that if there are any other questions, she knew that Mr. Pelka would be more than happy to answer them.

She wanted to thank all those people who have been so actively involved in this process. The prison ministries that go out and work with our people. The community support that is given to the inmates when they come back into the community. These are important resources that need to continue, so keep your constituents and friends involved in those projects. There is no way we could have done this extensive of a study without the help of CSG and the Pew Charitable Trust. They came together, came to Idaho and have helped the group us delve into some information that we did not have available. She also wanted to show appreciation to the team of three that has been here about every other week and sometimes most of the month working in Idaho. They have made tremendous sacrifices in order to help us organize this project. Representative Wills and Senator Lodge gave out gifts of a book, a Spuddy Buddy and an Onion Buddy to the CSG team members.

**ADJOURNED:** There being no further business before the Committee, **Chairman Lodge** adjourned the meeting at 2:49 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

**AMENDED AGENDA #1**  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Friday, January 17, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS22464</u></a>	Relating to Proceedings in Magistrate's Division	Patti Tobias, Administrative Director of the Courts
<a href="#"><u>RS22465</u></a>	Relating to Child Protective Act	Patti Tobias
<a href="#"><u>11-1001-1301</u></a>	<b>Idaho State Police Pending Fee Rules</b> Rules Governing Idaho Public Safety and Security Information System	Dawn Peck, Manager Bureau of Identification, Idaho State Police

COMMITTEE MEMBERS

Chairman Lodge  
Vice Chairman Vick  
Sen Davis  
Sen Mortimer  
Sen Nuxoll

Sen Hagedorn  
Sen Lakey  
Sen Bock  
Sen Werk

COMMITTEE SECRETARY

Carol Deis  
Room: WW48  
Phone: 332-1317  
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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, January 17, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Mortimer, Nuxoll, Hagedorn, Lakey, and Werk

**ABSENT/ EXCUSED:** Senators Davis and Bock

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:29 p.m.

**RS 22464** **Relating to Proceedings in Magistrate's Division**  
**Patti Tobias**, Administrative Director of the Courts, explained article V, section 25, of the Idaho Constitution requires defects in the law be reported by judges to the Governor each year. The courts prepare the legislation addressing those changes. Defect legislation always addresses errors or omissions in the laws that they make. For **RS 22464** the courts are requesting the words on line 9 "but can give no charge to the jury" be deleted. This provision was enacted in 1864 and is no longer correct. The court must always instruct the jury in matters of law as provided by a separate Idaho Code section and court rule.

**MOTION:** **Senator Hagedorn** moved to print **RS 22464**. Seconded by **Senator Lakey**. The motion carried by **Voice Vote**.

**RS 22465** **Relating to Child Protective Act**  
**Patti Tobias** explained last year HB 256 was enacted which made very helpful changes to the Child Protection Act. It was the result of extensive work by many including the Child Protection Committee, prosecuting attorneys, public defenders, the Department of Health and Welfare, court appointed special advocates, and many others. Unfortunately, there are two incorrect references that need to be corrected. On page 2 of the legislation, on line 6, (b) should be (c), and then on line 8, (c) should be (d).

**MOTION:** **Senator Mortimer** moved to print **RS 22465**. Seconded by **Senator Nuxoll**. The motion carried by **Voice Vote**.

**PASSING OF GAVEL:** Chairman Lodge passed the gavel to Vice Chairman Vick to present the Rules Review.

**DOCKET NO. 11-1001-1301** **Idaho State Police Pending Fee Rule**  
**Rules Governing Idaho Public Safety and Security Information System (ILETS)**  
**Vice Chairman Vick** stated just to refresh your memories we heard this rule on Monday and there was concern with the huge fee increase along with why ILETS was not considering cloud computing as a solution for some of their needs.

**Dawn Peck**, Manager Bureau of Identification, Idaho State Police (ISP), stated she had e-mailed the Committee a response that outlines the issues for cloud computing. ILETS system has to abide by the FBI Criminal Justice Information Services (CJIS) Security Policy. There are privacy issues for a law enforcement agency which precludes them from using cloud computing solutions. ILETS is connected to the FBI and they must abide by that security policy. To date, no state

or local law enforcement agency has been able to use that methodology. ILETS continues to search for a cheaper more economical avenue of doing business and securing data by using a method such as cloud computing. There are the Governor's rules and the compliance rules that ISP has to abide by in protecting data. When you are putting your data in a cloud you are trusting another entity to guard your data. Under the rules in the CJIS Policy they must do a document check of individuals that have access, either, logical or physical, to the data. ISP has to know that their facilities are secure, and the cloud architecture does not fit the check marks that must be completed to prove that ISP is secure under the FBI audits.

**Chairman Lodge** asked do you know if the cities and counties support the rule proposed by ISP on behalf of the ILETS. **Ms. Peck** responded that ILETS has spoken with the Association of Counties and Cities and they are in support of this rule change.

**MOTION:** **Senator Nuxoll** moved to approve **Docket No. 11-1001-1301**. The motion was seconded by **Senator Hagedorn**. The motion carried by **Voice Vote**.

**PASSING OF GAVEL:** Vice Chairman Vick passed the gavel back to Chairman Lodge.

**ADJOURNED:** There being no further business, the meeting adjourned at 1:52 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

AGENDA  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Monday, January 20, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<b>Docket No.</b> <a href="#"><u>05-0102-1301</u></a>	<b>Department of Juvenile Corrections Pending Rules</b> Rules and Standards for Secure Juvenile Detention Centers	Sharon Harrigfeld, Director
<a href="#"><u>57-0101-1201</u></a>	<b>Sexual Offender Management Board Pending Rules</b> Rules of the Sexual Offender Management Board	Kathy Baird, Management Assistant
<a href="#"><u>57-0101-1202</u></a>	<b>Sexual Offender Management Board Fee Rules</b> Rules of the Sexual Offender Management Board	Kathy Baird

COMMITTEE MEMBERS

Chairman Lodge  
Vice Chairman Vick  
Sen Davis  
Sen Mortimer  
Sen Nuxoll

Sen Hagedorn  
Sen Lakey  
Sen Bock  
Sen Werk

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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, January 20, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Mortimer, Nuxoll, Hagedorn, Lakey, and Werk

**ABSENT/ EXCUSED:** Senators Davis and Bock

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:30 p.m.

**PASSING THE GAVEL:** Chairman Lodge passed the gavel to Vice Chairman Vick to present the Rules Review.

**DOCKET NO. 05-0102-1301** **Department of Juvenile Corrections Pending Rule Rules and Standards for Secure Juvenile Detention Centers-Sharon Harrigfeld**, Director, stated the legislative intent of the Juvenile Corrections Act was a continuum of care, as well as working with juveniles in the least restrictive environment possible. This rule defines their responsibility to develop minimum standards for detention care and certification for approved detention facilities that are based on those standards. **Ms. Harrigfeld** stated they would then adopt administrative rules pursuant to the procedures of the act, which focused on safety and security of juveniles in detention facilities by adopting a zero-tolerance policy towards sexual assault while in detention. The development of the rules was in collaboration with the county commissioner and administrators, changes included staffing patterns, a 1 to 16 ratio during sleeping hours, increased frequency of criminal background checks (every 5 years) and more thorough standards for detection, prevention, reduction and response to sexual harassment.

**Senator Hagedorn** inquired as to the staffing ratio and how it affected their FTP count. Ms. Harrigfeld replied that it did not appear to affect the FTP count. **Stephen Jett**, Administrator of the Southwest Idaho Juvenile Detention Center, said that the 1 to 8 ratio will stand during waking hours and the 1 to 16 ratio will apply during sleeping hours.

**Senator Davis** inquired as to the criminal background check and the application of it as it coincided with the Prison Rape Elimination Act (PREA) Standard. **Ms. Harrigfeld** replied that the PREA Standards took ten years to create and would not likely change in the near future. **Senator Davis** asked if the rule was written with the reference to the PREA Standard in order to avoid the expense of outlining what the standards are during a background check. **Ms. Harrigfeld** responded that the rule was implemented in order to catch individuals who had committed a crime after the initial background check was conducted. **Senator Davis** said he understood the action of referencing outside standards for ease of communication, however, he stated his concern for deferring to third parties the ability to rewrite the Committee's administrative rules by rewriting their own.

**Senator Lakey** inquired about the staffing ratio in the detention facilities, to which **Ms. Harrigfeld** responded that they were moving from a staffing ratio which entailed 2 awake to a ratio where if there was less than 16 juveniles than there would only be 1 awake.

**Senator Hagedorn** referenced page 12 line G – Classification Records and inquired about the information from a resident's personal history and behavior to reduce the risk of abuse. **Ms. Harrigfeld** responded that the more they knew about a juvenile's history, the easier it was to place them in the appropriate section of the facility. **Mr. Jett** cited the PREA Standard which outlined the list of information obtained for appropriate placement in the facility. He also stated that the PREA Standards are available at [priasourcecenter.org](http://priasourcecenter.org).

**MOTION:**

**Senator Davis** moved to approve **Docket No. 05-0102-1301**. The motion was seconded by **Senator Bock**. The motion carried by **voice vote**.

**57-0101-1201**

**Sexual Offender Management Board Pending Rule**

**Rules of Sexual Offender Management Board- Kathy Baird**, Management Assistant, explained this docket is a repeal of the previous IDAPA 57 rules that were initially promulgated by the Sex Offender Classification Board in 2005. She explained that due to the extensive changes, necessary for the Sex Offender Management Board, it was decided to repeal Section 57 and start with a new set of rules.

**Senator Bock** inquired as to the effect of the repeal of the existing rules. **Ms. Baird** explained that the next docket is a complete rewrite of IDAPA 57, and the repeal was necessary in order to implement the new rules. **Senator Bock** then stated that it was advisable to consider both dockets together.

**Senator Davis** asked if there were any current, pending civil matters that rely upon, either in whole or in part, for the advantage or disadvantage of the Board, that by this repeal would be affected. **Ms. Baird** responded that there was no current or pending matter that she was aware of.

**57-0101-1202**

**Sexual Offender Management Board Fee Rules**

**Rules of the Sexual Offender Management Board- Kathy Baird** then introduced **Docket No. 57-0101-1202** and explained that it was a complete rewrite of IDAPA 57. **Ms. Baird** stated that the Board adopted, as temporary rules, the current pending rules in October 2013 so they could implement the procedures that are now before the Committee for final approval. The rulemaking was initiated to implement procedures mandated by the Sex Offender Management Board (Board), and the rewrite revolved around the Board's standards adult, Sex-Offender Management. **Ms. Baird** said that the standards would create a higher level of consistency and continuity among Idaho's sex offender service practitioners, as well as, establishing statewide standards for sex offender treatment – heretofore nonexistent.

**Ms. Baird** stated the Board conducted negotiated rulemaking for the process and enlisted the services of a nationally recognized expert in the field Sex Offender Management. Statewide provider input was solicited, and there were open hearings incorporated into the rule. The standards and administrative rules cover psychosexual evaluations, evaluator qualifications, sex offender treatment and treatment provider qualifications, as well as post-conviction, sex offender polygraph examiner standards. The rules also include disciplinary and complaint procedures along with a quality assurance process. **Ms. Baird** explained they adopted the Attorney General's Administrative Procedures Act processes related to contested cases due to the size of the Board. The Board created three levels of certification status for psychosexual evaluators and treatment providers, which are: Senior, Associate and Provisional. There was a deficit of treatment providers

and evaluators and the levels provide a pathway for an individual just beginning their career. All providers are required to have specialized training. Prior to the implementation of the levels all they had was a single certification. Post-conviction sex offender specialized polygraph standards only apply to that specific group as there was no licensure or certification for polygraph examiners in the state of Idaho, and that the standards incorporated the tenets of the American Polygraph Association's model policy.

**Ms. Baird** outlined the Fee Rule – a statute that allows the Board to collect up to \$150 for both initial certification and renewal certification processing fees, which is set in rule as well as in the standards. The Board incorporated renewal certification fees that would be assessed in the event that a provider wanted to change their certification status.

The psychosexual evaluation format has been modified considerably from the old format and includes specific psychological and risk assessment testing requirements and a checklist of static and dynamic risk factor variables.

The sex offender treatment standards incorporate assessment-guided treatment targets and goals to ensure that an offender's treatment is geared toward their specific areas of risks. By utilizing research-supported treatment methods and required documentation, such as treatment session notes, plus a monthly status reporting form that would be delivered to the probation and parole officers.

**Senator Hagedorn** inquired as to certification and asked if any of the definitions that were changed will affect any of the certified providers currently working. **Ms. Baird** responded that currently they only have certified evaluators and that the standard is somewhat different, though none of the current providers are impacted. She said there was a form for them to renew according to the new standard that differed from the initial application form, but there is little to no impact to existing providers. **Senator Hagedorn** then asked about the differing application fees and inquired as to the process that went into the formulation of those fees. **Ms. Baird** clarified that they are currently charging \$75 and \$50 fees. The major change is the insertion of the provisional provider and the Board decided not to charge as much for an individual just starting up a practice. **Senator Hagedorn** asked if the fee covered the related clerical costs of granting the certification to which **Ms. Baird** responded that was correct.

**MOTION:** **Senator Bock** moved to approve both **Docket Nos. 57-0101-1201 and 57-0101-1202**. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

**PASSING OF THE GAVEL:** Vice Chairman Vick passed the gavel back to Chairman Lodge.

**ADJOURNED:** There being no further business, the meeting adjourned at 1:52 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

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David Ayotte  
Majority Staff Assistant

AGENDA  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Wednesday, January 22, 2014**

SUBJECT	DESCRIPTION	PRESENTER
<b>Docket No.</b> <a href="#">21-0102-1301</a>	<b>Division of Veterans Services</b> Rules Governing Emergency Relief for Veterans	Tamara Mackenthun, Deputy Administrator
<a href="#">21-0108-1301</a>	Rules Governing Veterans Recognition Fund Grant Program	Tamara Mackenthun
<a href="#">RS22563</a>	Relating to the Idaho DNA Database Act of 1996	Senator Rice
Presentation	Department of Pardons & Parole	Olivia Craven, Director of Pardons and Parole
Presentation	IDOC Department Update	Brent Reinke, Director and Kevin Kempf, Team Leader for the ICC Transition

COMMITTEE MEMBERS

Chairman Lodge  
Vice Chairman Vick  
Sen Davis  
Sen Mortimer  
Sen Nuxoll

Sen Hagedorn  
Sen Lakey  
Sen Bock  
Sen Werk

COMMITTEE SECRETARY

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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, January 22, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Vice Chairman Vick** called the meeting to order at 1:31. p.m. and asked the secretary to call the roll.

**DOCKET NO. 21-0102-1301** **Division of Veterans Services**  
**Rules Governing Emergency Relief for Veterans - Tamara Mackenthun**, Deputy Administrator, explained this rule adds Tribal Veterans Representatives to the list of those who are eligible to receive funding to attend annual training. Currently counties and veterans service organizations and State Veterans Service Officers can be reimbursed for their annual service officers school. This rule change will allow five Tribal Veteran Service Officers representing just over 1,200 veterans to also attend our two and one-half day training course. It will allow them to receive information regarding Idaho specific services for veterans, and more importantly the latest information from the Federal Veterans Administration to assist Idaho veterans in filing claims for disabilities.

The result of this change will be an increase of our current budget by approximately \$2,500 of \$20,000 for this training.

**MOTION:** **Senator Hagedorn** moved to approve **Docket No. 21-0102-1301**. The motion was seconded by **Senator Lakey**. The motion carried by **voice vote**.

**21-0108-1301** **Rules Governing Veterans Recognition Fund - Tamara Mackenthun** stated last year HB 222 created the Idaho Veterans Recognition Fund and that fund set aside are \$18 million existing fund balance to fund initiatives and programs to support veterans. This bill also set down the basic procedures for the funds, specifically, the makeup of the committee that will decide how the money will be allocated. This rule provides the basic administrative procedures for the grant application process and lists the eligible activities and programs. These rules are almost identical to the rules for administration of our Veterans Support Fund, which is funded with the tax one check-off donations. This fund is simply on a larger scale with more checks and balances and requires more extensive justification for grants.

**MOTION:** **Senator Lakey** moved to approve **Docket No. 21-0108-1301**. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

**RS 22563**

**Relating to the Idaho DNA Database Act of 1996 - Senator Rice** stated currently Idaho Code requires the collection of a DNA sample upon conviction or a guilty plea to any felony or attempted felony, or upon a finding of probable cause. It is silent about other circumstances where a DNA sample could be collected.

A recent US Supreme Court ruling on DNA collection opens the door for the collection of a DNA sample upon arrest. The purpose of this legislation is to clarify that, in Idaho, DNA samples may be collected only upon a conviction or guilty plea to a felony or attempted felony, or with a warrant obtained through a finding of probable cause.

**MOTION:** **Senator Mortimer** moved to print **RS 22563**. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

**PASSING OF THE GAVEL** Vice Chairman Vick passed the gavel back to Chairman Lodge.

**PRESENTATION: Department of Pardons and Parole - Olivia Craven**, Director of Pardons and Parole, stated the Parole Commission conducted 2,934 hearings last year. The parole grant rate was 65 percent and they released 1,412 offenders to parole; which was 183 more than the previous year. For non-violent offenders the parole grant rate was 82 percent, medium risk offenders for non-violent crimes was 69 percent, and high risk offenders in non-violent crimes was 61 percent. The Department issued 1,044 warrants of arrest for parolees last year, but they do not have all of their statistics for parole violators completed. That data will be available in two weeks.

**Ms. Craven** explained that the Council of State Government (CSG) study, "Justice Reinvestment" showed that Idaho has a low crime rate but its recidivism rate has increased. Their department has been concerned with the higher rate of returns of parole violators. The CSG study pointed out that our incarceration rate is the eighth highest in the country, and offenders serving time for non-violent crimes are serving twice as much time as other states. The criminal justice system has not been reviewed since the mid-1980s. The Unified Sentencing Act was a result of this last review and created a fair sentencing process. However, we need to look at the administration of this Act. The Governor has stated that our state is at a crossroads. What do we want from our system? We want offenders to be held accountable for their actions; without accountability negative behavior continues. We want rehabilitation; drug and alcohol addiction is a big problem in the prisons. There are issues with mental health and criminality problems. We want offenders to change and not commit more crimes. We want all citizens to be responsible and take care of their families. The system can only provide the tools for change, it is up to the offender to use those tools to make the changes.

CSG's study recommends that more structure needs to be applied in all areas. The system is not broken and we do many good things in our state. They told us that we were ahead of many other states in the things that we do.

Problems that Idaho needs to address:

Concern for community treatment: Some of our best programs are in prisons; they are therapeutic communities which are long term drug and alcohol treatment programs. We have good sex offender and cognitive programs, CARP and ARDP that the courts and the parole commission use for parole violators. Studies show that treatment is more successful in the community. Increasing community based treatment for substance abuse, criminal thinking and attitudes, and mental health should be made available in that setting.

Supervision related to parolees: CSG research shows that supervision outcomes are greatest when sanctions are imposed with four factors: 1) Swiftly; 2) Consistency; 3) Proportionality; and 4) Rewarding behavior with incentives. Sanctions need to be enforced at the first violation; not waiting until there are numerous violations. This will help future violations not become bigger offenses such as committing a new felony or absconding. Give the parole officers the tools they need for short term arrests and more intensive treatment in the community. Also, tailoring confinement responses for the first and second violation without going directly to the Parole Commission.

Violations: Over the last one and half years the Department started triaging parole violations. They were simply receiving too many violations for them to efficiently process. About one-third of these parole violators will go through treatment through Facility Correctional Alternative Placement Programs (CAPP's), Conflict Resolution Program (CRP), and Residential Drug and Alcohol Program (RDAP); but these are three to six month programs and given in the prison system. One-third of the parole violators will be reinstated after a short term. One-third will go before the Parole Commission for revocation proceedings. They have reduced the time-frame for time in custody to three to four months for all parole violators. The new policy suggested by CSG would allow for the parole officer to provide sanctions and more treatment with the offender in the community. These sanctions in treatment have to occur when the violation occurs with swiftness and certainty. The system did not give parole officers tools to use. Parole officers will reap more positive results by applying structure and sanctions when violations occur. In conjunction with the use of short term jail incarcerations for one to three days. If the parolee is using drugs or alcohol, immediate referral to more intense treatment should be the course of action. More UA testing for drugs and alcohol abuse. Create a violations grid with graduated sanctions with increased severity based on the violation and risk level. Violators of restitution and other assessments should not go back to prison for their inability to pay these court ordered obligations; but it is often the reported part of the violation. The Criminal Justice Commission will be reviewing all of the assessments, restitution and all financial obligations to improve outcome. Right now the parole officers are administering collection of these debts instead of supervising these individuals.

Prison stays are twice the national average in Idaho; we need to move offenders through treatment. Offenders need to start preparing for release when they come into the system. Exploring answers, at that time, for questions such as where are they going to go when they get out. Focus on helping violators transition out to the community; this requires more life skills. Punishment alone is not effective in reducing recidivism. There needs to be more intensive treatment in the community to prevent violations that bring the offenders back to prison. CSG recommended that by policy they release non-violent offenders closer to their parole eligibility date. CSG pointed out that there needs to be increased capacity of state agencies to collect and analyze data in order to reduce inefficiency for better outcomes.

**Senator Lakey** stated at the magistrate level, when judges impose probation, they often compose discretionary time for the probation officer to impose for some of those short term and immediate consequences. Is there a need for a statutory change or a commission approach with the district judges for immediate consequences? **Ms. Craven** answered that the Commission has never been able to delegate authority to parole officers to give offenders discretionary jail time. The study presents statutory changes that would allow for this to occur; but the Commission is supportive of this change.

**Senator Lakey** stated the CSG study pointed out that there was an average of 78 days between the parole date to the release date. This seems an excessive amount of time. **Ms. Craven** clarified that much of this time is getting the offenders through their treatment program and parole plans. That is why she suggests putting more emphasis on parole plan issues sooner into the process. Programing has a finite number of available beds for treatment. Sometimes offenders have disciplinary problems and they are removed from programs and have to begin again.

**Senator Lakey** asked if there is a reason why offenders would choose to go to term versus going through their treatment system which would help them get out of prison earlier. **Ms. Craven** explained that treatment and responsibilities are hard, and sometimes offenders would rather do their time then work hard and take care of responsibilities.

**PRESENTATION: IDOC Department Update - Brent Reinke**, Director of Idaho Department of Corrections introduced **Kevin Kempf**, Team Leader for the Idaho Correctional Center ICC Transition stating that they will be presenting the Annual Report for IDC (attachment 1) and pointed out another project within that report of Children of Incarcerated Members (attachment 2). **Mr. Reinke** stated that currently the IDC is responsible for 1 out of every 34 adult men and 1 out of every 156 women in the state.

The Governor's request, declared that the goals of consistent successful day-to-day operations in our correctional system are better served by the State of Idaho taking a direct management role at ICC. The Boise site is a medium to high custodial prison and there are some challenges that the State faces because of the custody level of the prison; which is another reason why it is critical that the transition of operations be seamless. The operations of the correctional facilities will shift from the Corrections Corporation of America (CCA) to the Idaho Department of Corrections (IDC) at midnight on June 30, 2014. The individuals incarcerated in this Boise facility are medium to high custody offenders.

**Kevin Kempf** - Team Leader for Incident Command System ICS Transition, explained that the ICS is the structure that will allow the transition in the operations of the prisons to go seamlessly. Worldwide ICS is used to resolve major operations, large company mergers, etc. It is a process that ensures the transition will be smooth. There are three goals in the transition:

- Now to July 1 on-site visits at ICC, sorting of inventory and staffing.
- Stabilize population - transition to be slow and steady. All things important to correctional practices must be measured to make sure that all good correctional practices will be in place at ICC.
- Meaningful opportunities - good correctional practices. You must keep inmates busy. We want them to do something meaningful such as instituting a correctional industries program into ICC.

Cost of the Idaho Correction Center today: As of July 1, 2014 it will cost \$25.98/per day for personnel; \$7.87/per day on operational needs; .46¢/per day on capital outlay; \$15.31/per day medical contract; for a total of \$34.31/per day to operate the facility. Balla is the backdrop for the healthcare; which will incorporate medical services into the ICC. Healthcare cost at present is \$6.41/per day, these are very lean dollars for that care. There will need to be a significant change in healthcare operations in the facility on July 1, 2014.



IDC Annual Report (attachment 3) shows that they have lost one out of every four corrections officers in the Department. To address this attrition the Department has gone from using five to seven academies at POST. Probation and parole case loads are at 79 offenders to 1 officer. Education, treatment and reentry: Produce 10 percent of the GED's in the State.

**Senator Werk** asked will ICC be hiring some of the staff that has been working for CCA. **Mr. Kempf** replied that they intend to hire many of the current CCA staff, primarily in the correctional officer ranks.

**Senator Davis** asked if the state of Idaho had recovered the overpayment to CCA. **Director Reinke** stated that they are just at the end of the investigative process with the Idaho State Police (ISP). The Board of Corrections is looking into those negotiated amounts and will report on that outcome in the very near future.

**Senator Hagedorn** said he was glad to see the slide of the fire suppression teams. Since Idaho is a natural resource rich state, there could be some opportunity for the prisoners to work on fire suppression such as removing fuels. Consider hatching and stocking sage grouse for the State. Are there incentives which would help inmates choose educational training versus going to term? **Director Reinke** advised that they have six crews working up and down the highways in all parts of the State removing fuels. They are looking into raising grouse, pheasants, etc. for restocking the State. Their goal is to do a better job of workforce development within the prison system. As to your term question, there are those individual inmates that prefer the incarcerated life and that is something they have to work on with one inmate at a time.

**Vice Chairman Vick** asked what are the opportunities for training at the facility? **Director Reinke** explained that they are very limited. There is no correctional industry presence at the ICC. Next year the Director will be back to request a correctional industries be considered at ICC. There are 2060 inmates that need some type of a production line assembly. It is about workforce readiness and development.

**ADJOURNED:** There being no further business, the meeting adjourned at 2:52 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

AGENDA  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Friday, January 24, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS22509</u></a>	Relating to Estates	Robert L. Aldridge, Trust & Estate Professionals of Idaho, Inc.
<a href="#"><u>RS22510</u></a>	Relating to Guardians	Robert L. Aldridge
<a href="#"><u>RS22511</u></a>	Relating to Testamentary Appointments of Guardians of Minors	Robert L. Aldridge
<a href="#"><u>RS22512</u></a>	Relating to Probate	Robert L. Aldridge
<a href="#"><u>RS22513</u></a>	Relating to Protected Persons	Robert L. Aldridge
<a href="#"><u>RS22435</u></a>	Relating to the Peace Officer Standards and Training Council	Rory Olsen, POST Deputy Director

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Vick

Sen Davis

Sen Mortimer

Sen Nuxoll

Sen Hagedorn

Sen Lakey

Sen Bock

Sen Werk

COMMITTEE SECRETARY

Carol Deis

Room: WW48

Phone: 332-1317

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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, January 24, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Senators Mortimer, Nuxoll, Hagedorn, Lakey and Werk

**ABSENT/ EXCUSED:** Vice Chairman Vick, Senators Davis and Bock

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:30 p.m. and asked the secretary to call the roll. **Chairwoman Lodge** stated that there was a quorum and welcomed Bob Aldridge to the Committee.

**RS 22509** **Relating to Estates - Robert L. Aldridge**, Trust and Estate Professionals of Idaho, Inc., stated that the first bill was a housekeeping matter regarding legislative changes to the code that have been made. The references to what was eliminated needed to be removed as well in order to avoid confusion. Mr. Aldridge stated that the first change was on page 1, line 31 which was repeated on page 2, lines 13 and 30 and referenced that the Family Allowance had been eliminated from the Probate Code as it was based on archaic ideas on the function of the probate. He stated that the other elimination was in section 2, page 2, line 4, a change in the time period in which claims could be presented in probate from two years to three years.

**MOTION:** **Senator Lakey** moved to print **RS 22509**. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**RS 22510** **Relating to Guardians - Mr. Aldridge** then stated that Justice Jones pointed out in the Doe v Doe that while the Idaho Code did have some provisions for removal of a minor guardian, it did not have any provisions for termination or modification. **Mr. Aldridge** outlined the addition to page 1, line -16 which was "or upon termination of the guardianship" and on line 20 "if a guardian resigns without the appointment of a successor guardian than that does not terminate the guardianship" stating that there must be a successor in place. In Section 210, lines, 23 through 25, they paralleled the "best interest" test already in place for "removal". A minor over 14 has the ability to object to the appointment and that has been preserved for the modification and termination.

**MOTION:** **Senator Mortimer** moved to print **RS 22510**. Seconded by **Senator Nuxoll**.

**Senator Hagedorn** asked for clarification on page 1, line 24 that states the guardianship may be terminated upon petition by an "interested person". What are the parameters of "interested person"? **Mr. Aldridge** responded that in the Probate Code 151201 there was a definition for the term.

**Senator Werk** asked what would occur if a guardian was not appointed. **Mr. Aldridge** responded that the information was the subject of the next bill.

**VOTE:** Motion carried by **voice vote**.

**RS 22511** **Relating to Testamentary Appointments of Guardians of Minors - Mr. Aldridge** then presented **RS 22511** and stated that, while they have had in the statutes the ability for a parent to appoint a guardian for their minor, there was no procedure if there was a list of possible guardians. He said that the change occurred in lines 29 through 36 where the parent can appoint by Will one or more alternate guardians, in order of priority. If a guardian appointed by will fails to accept within 30 days or files a notice declining to act than the alternate guardian, next in line in priority, can file their notice of acceptance. A minor over 14 has the ability to object to these appointments.

**MOTION:** **Senator Hagedorn** moved to print **RS 22511**. Seconded by **Senator Werk**. The motion carried by **voice vote**.

**RS 22512** **Relating to Probate - Mr. Aldridge** said that two very useful portions of the Probate Code were Summary Administration, a non-probate procedure where a surviving spouse files a petition that acts like a deed that transfers property to them, and a Small Estate Affidavit. This legislation clarifies that neither of these procedures are subject to the three-year provision laid out on page 1, lines 14,15, 35 and 36 which avoids the conflicting rulings that have occurred in regards to them.

**MOTION:** **Senator Nuxoll** moved to print **RS 22512**. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**RS 22513** **Mr. Aldridge** explained that it is a well known fact that an appointment of a guardianship does not automatically mean that the person has no capacity to do anything, and that it is a matter of looking at the capacity test for whatever action they intend to undertake. That in the case of the conservatorship there was an expressed term that stated it had no effect on capacity. There was no provision for that in the guardianship in the original code. **Mr. Aldridge** cited an Idaho Supreme Court case from 2011 in which an individual, suffering from Alzheimer and unable to act on his own behalf, had his son appointed guardian for him. Subsequently there was an online application for a life insurance policy that disclosed neither the guardianship nor the Alzheimer and named the son as the sole beneficiary. The individual died shortly thereafter and the insurance company, upon investigation, refused to pay. The Idaho Supreme Court held that, in Title 32 along with terms in the Probate Code, the contract was voided. Consequently, an issue with testamentary capacity and how it was defined, along with limited guardianships or conservatorships arose and in response they put together a committee which produced a solution.

**Mr. Aldridge** said that the solution was in a new section to the code which states that the appointment of a conservator or other protective order does not have an effect on the testamentary capacity of the protected individual; similarly, the appointment of a temporary guardian/conservator has no effect on testamentary capacity. Testamentary capacity is defined as executing/modifying a will or other document that distributes at death, as well as, identifying beneficiaries on life insurance or retirement plans and pay-on-death/transfer-on-death account designation. In order to make it clear that this was not an automatic action, it was stated that nothing alters or amends any of the standard claims, challenges or defenses regarding the validity of the exercise of testamentary capacity by the protected person.

**Mr. Aldridge** outlined 15-5-427 which was a preservation of the estate plan and stated that a conservator and a guardian both had a duty to continue and preserve the estate plan of the protected person as much as possible.

**Mr. Aldridge** summarized section 4 and 5, which he had referenced in Title 32, as being enacted in territorial days and reflect an outmoded concept of how mental health is treated currently. He stated that changes occurred in 32-106, lines 25 through 27 in order to update the language to modern standards as well as a change to remove the word "insane" which was replaced by "incapacitated".

**MOTION:** **Senator Mortimer** moved to print **RS 22513**. Seconded by **Senator Hagedorn**. Motion carried by **voice vote**.

**RS 22435**

**Relating to the Peace Officer Standards Training Council - Rory Olsen**, POST Deputy Director, **RS 22435** is a proposed amendment to Idaho Code § 19-5101 on behalf of the Idaho State Police Division of Peace Officer Standards and Training and the Governor's Peace Officers Standards and Training, commonly known as POST. Idaho Code § 19-5101 provides definitions to terms referred to throughout Chapter 51 and specifically to the sections they were seeking to amend. He stated that in § 19-5101D the proposed addition was "or voluntary reserve officer" to the definition of "peace officer" on line 19 of the legislation. Voluntary reserve officers were a vital asset to law enforcement agencies throughout Idaho and have been certified by POST since 1989. There are currently over 290 reserve officers and that they have been certified by POST under the current definition of "peace officer" § 19-5101 subsection D with further definition within the Administrative Rules. During a recent review of provisions for voluntary reserve officers the POST council thought it would be prudent to include "voluntary reserve officer" in the definition of "peace officer". He stated that the POST council formed a subcommittee to seek input from chiefs and sheriffs regarding the need and use of reserve officers. They found that varying agencies depend on reserve officers to provide needed services to the public and voted to seek a legislative amendment.

**Senator Mortimer** asked if changing the definition would change any aspect of the requirements or conditions in regards to insurance liability or ability to attend POST. **Mr. Olsen** replied that it was simply a matter of addition to definition in order to ensure that reserve officers had the authority to carry out their actions.

**MOTION:** **Senator Mortimer** moved to print **RS 22435**. Seconded by **Senator Nuxoll**. Motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned at 1:58 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

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David Ayotte  
Majority Staff Assistant

AGENDA  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Monday, January 27, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
	Approve Minutes of January 13, 2014	Senator Davis & Senator Werk
<a href="#"><u>RS22593</u></a>	Gang Legislation	Ellie Somoza, Nampa Prosecuting Attorney
<a href="#"><u>S 1214</u></a>	Relating to Proceedings in Magistrate's Division	Michael Henderson, Legal Counsel for the Courts
<a href="#"><u>S 1215</u></a>	Relating to the Child Protective Act	Michael Henderson

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Vick

Sen Davis

Sen Mortimer

Sen Nuxoll

Sen Hagedorn

Sen Lakey

Sen Bock

Sen Werk

COMMITTEE SECRETARY

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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, January 27, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock, and Werk

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:32 p.m. and asked the secretary to call the roll.

**MINUTES:** Approve Minutes of January 13, 2014

**MOTION:** **Senator Werk** moved to approve the minutes of January 13, 2013. The motion was seconded by **Senator Davis**. The motion carried by **voice vote**.

**RS 22593** **Relating to the Idaho Criminal Gang Enforcement Act** - Ellie Somoza, Deputy Prosecutor Canyon County, stated the purpose of this bill is to conform the legislative intent regarding the Idaho Criminal Gang Enforcement Act. As it is currently written, the enhancement of 52 only applied to charges filed by indictment or by information. Only felony charges can be filed by indictment or information. The enhancement of the legislation calls for increased penalties for misdemeanors but misdemeanors cannot be filed by indictment or information. This was an oversight when the original legislation was passed. The words complaint and petition shall be added to the legislation so that these enhancements can be applied to misdemeanors and juvenile charges.

**Senator Bock** asked for clarification on the changes on page 2 in the legislation, that are not related to the changes that have been presented. **Ms. Somoza** stated the purpose of the changes on page 2 is to prohibit committed felons from possessing firearms. **Senator Bock** asked why this change is not part of Ms. Somoza's presentation. **Ms. Somoza** clarified: 1) The enhancement as written only applied to charges that are filed by information or indictment. The purpose of this legislation is to correct that language to include complaint or petitions as they apply to misdemeanor charges and juvenile charges. 2) Individuals that were convicted of crime recruitment, supplying firearms to a criminal gang and human trafficking

**Senator Lakey** stated there is an additional portion that relates to the revocation of a right to bare firearms by certain convicted felons, but these are not referenced in the Statement of Purpose (SOP). This legislation should come back to the Committee another day.

**Senator Davis** explained if you choose to print the RS between now and the time that the Senate introduces it tomorrow, a new (SOP) including the revocation of the right to bare firearms by certain convicted felons could be routed to the Committee to make sure they would accept the added language. Clearly Rule 18 is intended to pick up this very situation which challenges the sufficiency of the SOP, and if it appears to be inadequate then the SOP should be repaired. If the legislation is caught at a print hearing this is the best time to clean up the language.

**Senator Werk** said there are two subjects that are being dealt with in this single bill. Issue one is the complaint or petition. Issue two deals with felony convictions and which individuals can possess a firearm after serving time. These are two separate issues and the legislation should be presented in two different bills.

**Chairman Lodge** said **RS 22593** will be held in Committee.

**PASSING OF  
GAVEL:**

Chairman Lodge passed the gavel to Vice Chairman Vick to continue the meeting.

**S 1214**

**Relating to Proceedings in Magistrate's Division** - Michael Henderson, Legal Counsel for the Courts, explained that **S 1214** deals with Idaho Code §19-3915. Chapter 39, Title 19, which deals with proceedings in the magistrate division of district court. The statute states that the "court must settle all questions of law that may arise in course of a trial, but can give no charge to the jury." The charges to the jury are the courts instructions to the jury of applicable law. Dating back to 1864 the language seems to clearly be contradicted by other provisions in Idaho Law including §1921-32 which states charging the jury in all matters of law necessary for their information. Criminal Rule 30 has detailed provisions as to how the court arrives at the instructions that it gives to the jury.

**Senator Davis** moved to send **S 1214** to the floor with a do pass recommendation. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

**S 1215**

**Relating to the Child Protective Act** - Michael Henderson stated that this is another defects bill. Last year the Child Protection Committee of the supreme court recommended to the Legislature certain changes to the Child Protective Act, and that bill was passed. The supreme court made some errors in the references of the legislation. **S 1215** deals with amendments to Section 16-1622 which references back to the proceeding statutes Section 16-1621, under Subsection 3.

**MOTION:**

**Senator Davis** moved to send **S 1215** to the floor with a do pass recommendation. Seconded by **Senator Nuxoll**. The motion carried by **voice vote**.

**ADJOURNED:**

There being no further business, **Chairman Lodge** adjourned the meeting at 1:50.

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Senator Lodge  
Chair

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Carol Deis  
Secretary



AGENDA  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Wednesday, January 29, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS22683</u></a>	Battery Against Healthcare Workers	Emily McClure, Idaho Medical Association
Presentation	Department of Juvenile Corrections	Sharon Harrigfeld, Director
Presentation	Idaho Criminal Justice Commission	Sara Thomas, Chair

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Vick

Sen Davis

Sen Mortimer

Sen Nuxoll

Sen Hagedorn

Sen Lakey

Sen Bock

Sen Werk

COMMITTEE SECRETARY

Carol Deis

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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, January 29, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:33 p.m.

**RS 22683** **Relating to Battery Against Healthcare Workers - Emily McClure**, representing the Idaho Medical Association, said Idaho Law provided enhanced penalties for assault and battery against certain classes of professionals. For example: It is a felony to batter an EMT, police officer, tax commission employee, others. There is a serious problem in Idaho with violence against healthcare workers; particularly in emergency rooms and by those who are seeking drugs. Healthcare professionals are in the unique position that they are required to treat individuals, by law, even when they show up violent. To do so they have to be, often times, in close physical proximity with these patients. This bill would make it a felony to batter a healthcare worker or employee. The risk of job related violence against healthcare and social workers is presently higher than for any other field. Early study shows that from 1993 to 1999 the incidence of violent crimes against healthcare workers was two-times higher than that of any other private sector occupation. The most recent survey from the Bureau of Labor Statistics now shows that the likelihood of a healthcare worker being the victim of a violent crime, in the workplace, has grown to three times that of any other private sector occupation. Approximately 50 percent of all non-fatal injuries to workers, from violent acts, occur in the healthcare sector.

This bill differs from last year's bill in that it only applies to battery not assaults. Like last year's bill it includes a qualifier that the battery must take place "when the victim is in the course of performing his/her duties or because of the victims professional or employment status." Finally, the legislation includes a sentence which specifies "it shall be an affirmative defense to a violation of the statute that the action was taken by a person who because of mental illness or disability or because he is under the influence of lawfully obtained and properly used prescription drugs lacks the ability to form the intent to commit the crime." In addition, "the provisions of section 18-207 do not apply to this section." Statute 18-207 states that insanity is not a defense in Idaho.

**Vice Chairman Vick** questioned the sentence "or because of the victims professional or employment status." How will that be determined? **Ms. McClure** clarified, the attack must be because of their professional status. For example: If you had a nurse in the emergency room and you attacked that nurse in the parking garage, this would be because of her professional status as the nurse. The aim of including this particular provision is to address the occurrence of attacks in rural communities. Healthcare workers in these rural communities are being recognized by individuals with drug seeking behaviors when they are out on the streets.

They are being stopped and battered because they are a physician or a nurse practitioner with the ability to write a prescription for drugs.

**Senator Hagedorn** asked if a nurse got off duty at the hospital and went to the grocery store and on the way home was assaulted by an individual to steal their money or car would this legislation automatically be applied to this assault situation.

**Ms. McClure** answered the legislation would not apply in this scenario. It only applies in the situation of being battered because of their status as a nurse.

**Senator Bock** asked what would happen under current law if there was a battery of a nurse in the hospital room. **Ms. McClure** replied currently there are many batteries against nurses in hospital rooms, and that action would fall under the existing misdemeanor battery provisions. The problem is that there is an increase of battery against nurses and other healthcare professionals and the current misdemeanor statute is doing nothing to curb the incidents. This bill's aim is to curb the number of batteries against healthcare professionals.

**MOTION:** **Senator Werk** moved to print **RS 22683**. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

**PRESENTATION: Department of Juvenile Corrections - Sharon Harrigfeld**, Director, stated they are a workforce of 401 dedicated staff who are responsible for the 24/7 operation to develop productive citizens in partnership with communities through juvenile crime prevention, education, rehabilitation and reintegration. The Legislature created the Department of Juvenile Corrections in 1995 using the Balanced Approach Model. Focusing on holding young offenders accountable for their crimes and keeping communities and juveniles safe. Providing them with experiences they need to become successful and productive adults. They respond to youth needs by building partnerships to make the most impact engaging families and treating juveniles as individuals because every situation is unique. It is their intent to have the juveniles move through the system without slipping through the cracks. Helping juveniles respond to the help they need to find more productive ways for them to seek what they need and address their issues at the earliest stage with the least restrictive methods. (attachment 1)  
Projections/Programs:

- Keeping juveniles in community/grow into responsible adults/families have a major influence on their children's achievements
- Re-entry Planning Grant - Evidence-based programming for juveniles upon re-entry
- Mental Health funding/community incentive project/federal grants
- Matching Risks/Needs
- Diversion Programs
- Reparation/Juveniles Accountable for Harm Caused/Community Service
- Restorative Conferencing/Victim/Youth/Community-what happened, how choice affect others, harm be repaired, trust/community safety/reintegration

**PRESENTATION: Idaho Criminal Justice Commission - Sara Thomas**, Idaho State Appellate Public Defender and Chair of the Criminal Justice Commission, said this presentation (attachment 1) is an overview of the Commission's work in 2013/2014.

The Commission's vision is to collaborate for a safer Idaho. Their mission is for balance solutions which are cost-effective and that are based on best practices to achieve a safer Idaho. Their purpose is the efficiency and effectiveness of the criminal justice system to encourage dialogue among the respective branches of government. They encourage that dialogue by having representatives from all three branches of government.

Executive Branch Representation: Police, prosecution, corrections, education and Health and Welfare Department. Judicial Representation: Three judges that meet with the Commission along with the Administrative Director of the Courts. Legislative Representation: Two members from the Senate (Lodge and Bock) and two members from the House (Wills and Burgoyne). They include both county representation: Idaho Association of Sheriffs and Prosecuting Association. City Representation: Representative from the Chief of Police Association. Representation: Commission on Hispanic Affairs and public members.

Responsibilities: Accurate information through the Results First project. Project: Computer model that looks at the cost of a program and effectiveness of a program. How much funds the State is investing in, for example problem solving courts. Evaluating: How effective they are and the rate of recidivism of the individuals who have gone through them. Comparing outcomes for individuals that have gone to prison for possession versus individuals who have gone through the problem solving courts and taking into consideration the risk level of the those individuals. Then evaluating what is the most effective course of action for a possession case and how much funding is involved. This year they created the Community Guide to address criminal gangs in Idaho. The Guide lists resources that communities can access to answer questions about gangs in Idaho. It gives mechanisms to suppress gangs and encourages youth not to join gangs. (attachment 3)

**Ross Mason** - Chair, Children of Incarcerated Parents Subcommittee, explained a pilot program that has been instituted in two schools one in Boise and the second in the Valley View District. Their program started with 22 students and ended with 16. These students all had a parent or parents in prison for a sentence of six months or more. The ages of the children were 8 to 11 years old. The children met once a week in a club setting. They thought the program results would produce improved attendance and that would improve academics by default, hence improving behavior. The results were quite different then they expected. What happened was behavior at home improved substantially, (27 percent). All the students in the pilot who were not working at grade level when they started were working at grade level when they finished. Attendance improved just slightly. Parents and children universally felt that the program was valuable and all of the parents asked that the program would be continued. The second term of the pilot began in January and five schools have joined. They have been encouraged by the reception they received from counselors and teachers. The program is inexpensive to run and easy to set up once the children are identified and the parents buy-in to the program.

**Senator Hagedorn** stated with the statistic of a 27 percent improvement in behavior at home what was the reason behind this substantial improvement. **Ross Mason** explained at the beginning of the pilot they gave a questionnaire to the parents, students and teachers. They asked the questions at the end of the first and second term and compared them to the answers from the first questionnaire. They found many of the problems at school were being generated at home. The pilot is a socialization program that allowed the children to get out anger and hostility while they learned how to vent and talk and to relate their experiences and frustrations.

**Chairman Lodge** asked if the children's grades improved. **Mr. Mason** answered that the grades improved slightly. Most of the children were not working at grade level when they started the pilot, and at the end they were working at grade level. **Chairman Lodge** stated these schools have some difficult populations with children at risk. **Mr. Mason** replied that these schools were chosen because they are title one schools and poverty is strongly associated with this population.

**Monty Prow** - Chair, Criminal Justice Research Alliance Subcommittee, stated that the Idaho Criminal Justice Commission was awarded a small technology grant to assist Idaho Partners in establishing a technique of data sharing that has been successful in over 20 other states. This service does not create a single collect and report database rather it uses existing department's systems and creates an interpreter. This is a series of connections between existing systems. It is a very inexpensive way to assist the partners with crossover client data, only when appropriate, asked for, and when privacy and security can be assured.

**Ms. Thomas** pointed out some upcoming issues that the Commission is facing: PREA (Prison Rape Elimination Act), Misdemeanor Reclassification, Sex Offender Registration and an ongoing review on Fines/Fees Review.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:40 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

AGENDA  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Friday, January 31, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
MINUTES	Approve Minutes of January 17, 2014	Senator Mortimer & Senator Lakey
<a href="#">S 1240</a>	Relating to the Idaho DNA Database Act of 1996	Senator Rice

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Vick

Sen Davis

Sen Mortimer

Sen Nuxoll

Sen Hagedorn

Sen Lakey

Sen Bock

Sen Werk

COMMITTEE SECRETARY

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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, January 31, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Nuxoll, Hagedorn, Bock and Werk

**ABSENT/ EXCUSED:** Mortimer and Lakey

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:32 p.m. and asked the secretary to call the roll.

**MINUTES:** **Chairman Lodge** stated that the Minutes of January 17, 2014 would be held until Monday, February 3, 2014 for the assigned Senators to make the motion.

**S 1240** **Relating to the Idaho DNA Database Act of 1996 - Senator Rice** explained this bill inserts a clause into Section 19-5506 stating that absent a warrant authorizing DNA collection based upon probable cause, no individual shall be required to provide a DNA sample unless the individual has been convicted of, or pleads guilty to, any felony crime, or the attempt to commit any felony crime. This is a reference back to the existing statute in Section 19-5506 that allows collection of a DNA sample and placing that information in the database upon conviction of felony crimes or attempts to commit felony crimes.

In recent U.S. Supreme Court decision *Maryland v King*, there was a challenge to taking DNA as an arrest procedure. The Court in a five to four decision held that taking and analyzing a cheek swab of the arrestee's DNA is like fingerprinting and photographing, a legitimate police booking procedures that is reasonable under the Fourth Amendment. The Fourth Amendment and similar protections in Idaho's Constitution allow that privacy of an individual is listed ahead of privacy of our property. There is nothing more invasive then violating the privacy of our person and DNA sampling is an invasion for an investigative purpose.

This bill is about protecting the Fourth Amendment rights against unreasonable searches of individuals. If you do not have probable cause particularized we are not doing an investigative search of the individual's DNA.

**Senator Hagedorn** stated in the processing of an arrested person wouldn't the fingerprinting and photographing of the arrested person, prior to a conviction, fall under the same logic as this DNA sampling. **Senator Rice** explained there is a difference. First, if a person is photographed that is their outward appearance; that is what everyone can see when you walk down the street. Second, fingerprints are visible when an individual holds up their hand, their fingerprints are in plain view. No one looking at an individual can see their DNA. It has to be revealed by a scientific laboratory analysis.

**Senator Hagedorn** asked when we arrest an individual, before they are found guilty of any crime, and the fingerprints are taken, the arresting authority can use those fingerprints to assess if they were found at another crime scene. Would this be the same as taking DNA and looking for the DNA at another crime scene. **Senator Rice** clarified the difference is that the primary purpose for fingerprinting is to match up a person with their prior record, not to match them up with other crimes. In fingerprinting they are matching up a person's identity; actual identity based on prior record not on comparing that information to other crimes. The DNA sample is not used to compare against records identity it is used to compare against closed or cold cases.

**Senator Werk** asked absent the changes to Section 19-5506 in **S 1240** then law enforcement agencies around the State would be free to collect DNA samples upon any type of arrest. **Senator Rice** answered that is correct. If there is no prohibition, then the booking procedures are left to each agency.

**Senator Davis** asked if an individual is being investigated for an offense, as part of an investigation, could the law enforcement agency compel the individual to provide a DNA sample. **Senator Rice** answered they could take a sample if they arrest or had probable cause and a warrant. This legislation prohibits collecting DNA as a booking procedure. If there is an arrest and the arrestor has probable cause that the person committed the crime and DNA evidence were a factor in the case the arresting authority would be able to take a DNA sample on a finding of probable cause with a warrant. The arresting authority could not take a DNA sample just because they arrested an individual. **Senator Davis** asked for clarification concerning a person who has been convicted of or pleads guilty to a felony. Can a law enforcement agency collect a DNA sample and retain it for subsequent investigations independent of the offense that they have been convicted for. In the event, that the law enforcement agency does not have a DNA sample and there is some investigation concerning the arrestee the agency must obtain from a magistrate judge an order making a determination that probable cause exists, prior to requesting the DNA collection. **Senator Rice** answered that the law enforcement agency could request or the arrestee could volunteer, but they could not require the DNA. If they go to the magistrate and get an order they can require the DNA sample. **Senator Davis** asked if the law enforcement agency has an order from the magistrate judge to collect the DNA sample from the arrestee and no charges are brought is the agency allowed to take that collection of DNA and put it in the DNA database for subsequent investigations? **Senator Rice** answered the law enforcement agency could put it in the database for subsequent investigations because they obtained it pursuant to a warrant and probable cause.

**Senator Hagedorn** stated under Section 19-5506, DNA collection is restricted to a felony. **Senator Rice** explained this is part of the existing statute that was collected on those felonies, but it is only on conviction in Idaho. This bill creates an exception to those convictions in Idaho it does not go back and restate whether the Idaho statute applies or does not apply to people convicted in other states.

**MOTION:** **Senator Werk** moved that **S 1240** be referred to the 14th Order for amendment. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:10 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary



**AMENDED AGENDA #1**  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Monday, February 03, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS22726</u></a>	Relating to Boating	Senator Keough
<a href="#"><u>S 1246</u></a>	Relating to Estates	Robert L. Aldridge, Trust & Estate Professionals of Idaho, Inc.
<a href="#"><u>S 1247</u></a>	Relating to Guardians	Robert L. Aldridge
<a href="#"><u>S 1248</u></a>	Relating to Testamentary Appointments of Guardians of Minors	Robert L. Aldridge
<a href="#"><u>S 1249</u></a>	Relating to Probate	Robert L. Aldridge
<a href="#"><u>S 1250</u></a>	Relating to Protected Persons	Robert L. Aldridge

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Vick

Sen Davis

Sen Mortimer

Sen Nuxoll

Sen Hagedorn

Sen Lakey

Sen Bock

Sen Werk

COMMITTEE SECRETARY

Carol Deis

Room: WW48

Phone: 332-1317

email: [sjud@senate.idaho.gov](mailto:sjud@senate.idaho.gov)

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, February 03, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** Senator Nuxoll

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:31 p.m. and asked the secretary to call the roll.

**RS 22726** **Relating to Boating - Senator Keough** stated the purpose of this legislation is to update Idaho Code § 67-7016 the Idaho Boating Act. She clarified that the reason for the update is because the code has been litigated twice and deemed unconstitutionally vague. Senator Keough indicated there is a need to have in place procedures to address boaters who have not been appropriate in the operation of their boat. She recounted recent situations resulting in accidents and injuries. Senator Keough offered to answer questions now or after the bill is printed.

**Chairman Lodge** asked for questions. **Senator Werk** expressed interest in how this statute isn't vague enough. **Senator Keough** explained current Idaho Code § 67-7016 does not have specifics as to negligent operation and summarized a court decision indicating that specific actions were not delineated in the code and therefore was deemed unconstitutionally vague. **Senator Bock** requested that in a later hearing the new language be compared to the current language, specifically Subsection 1, questioning negligence versus gross negligence. **Senator Keough** agreed to provide the comparison in a later hearing.

**MOTION:** **Senator Mortimer** moved to print **RS 22726**. Seconded by **Vice Chairman Vick**. The motion carried by **voice vote**.

**S 1246** **Relating to Estates - Robert L. Aldridge**, Trust and Estate Professionals of Idaho, said this bill is only housekeeping. As changes have been made to the Idaho Probate Code, some cross-references that should have been deleted or modified have been missed. This has caused confusion as attorneys, laymen or courts ran across the incorrect cross-references and thought that these cross-references still existed in the Idaho Probate Code.

This bill corrects two areas: 1) In Sections 1, 3, and 4, this bill deletes references to the "family allowance", which was eliminated from the Idaho Probate Code several years ago. 2) In Section 2, the time period for presentation of certain claims in probate was changed in the Uniform Probate Code from two years to three years, but the reference to that time period in this code section was not properly changed to state the three year period. In Sections 3 and 4 crossing out the reference to family allowance.

**Vice Chairman Vick** asked for a definition of "family allowance". **Mr. Aldridge** explained that family allowance was part of the original Probate Code when it was adopted in 1972. There were three allowances in the Idaho Code: 1) Homestead which was an amount to make sure that the surviving spouse had the ability to live for a period of time; 2) Exempt Property which was the ability to get certain items of personal property, up to a \$10,000 limit; and 3) Family Allowance which was an amount of \$18,000 which could be applied for by the surviving spouse or minor children for a living allowance. As they reviewed the legislation the family allowance had become a term that was not fulfilling its actual purpose. It was being used to manipulate the estate plan. If the individual who prepared the estate plan was not sophisticated they would be unaware that they could deny those to the surviving spouse and especially in a family situation where inheritance is to go to the children of the decedent the surviving spouse would file for all of the allowances and divert a large amount of the inheritance over to their side of the ledger. **Senator Bock** asked for clarification in Section 2 concerning the connection between the statute of limitations and the family allowance. **Mr. Aldridge** answered that all of these terms are incorrect cross-references within the Probate Code. This is simply a housekeeping bill to clean out these incorrect cross-references, either deleting them or changing them to the correct cross-reference.

**MOTION:**

**Senator Hagedorn** moved to send **S 1246** to the floor with a do pass recommendation. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**S 1247**

**Relating to Guardians - Robert Aldridge** explained the existing Idaho Probate Code on guardianship of minors does not have any provisions for the termination of such guardianship if the termination is not because of the death, resignation, or removal of the existing guardian. This lack was pointed out in an Idaho Supreme Court case, Doe v Doe. Additionally, there are no provisions for modification of the guardianship of a minor. Both of these are important matters that should be settled in the statute.

This bill provides in Section 1 for the termination of a minor guardianship if that is in the best interests of the minor. In Section 2, the bill adds provisions for modification of the guardianship in the best interests of the minor. This reflects the actual practice of the Idaho courts.

The term "best interests" is well understood by attorneys and by courts and has a long history of its meaning and application.

**Senator Davis** questioned the difference between "termination" and "removal". **Mr. Aldridge** explained that removal means that the individual acting as guardian is removed, while termination means that the guardianship itself is ended. **Senator Davis** further questioned the language. **Mr. Aldridge** gave an example of a situation where the language would be applied. **Senator Davis** again questioned **Mr. Aldridge** concerning the language about "termination". **Mr. Aldridge** indicated that termination concerns two meanings, one of the guardianship and another of the guardian. **Senator Bock** asked about the last sentence in Section 1 specifically the word "may" instead of "shall". **Mr. Aldridge** recounted situations where the court would need discretion as to termination and that the language contained in the legislation reflects that.

**Senator Davis** asked further about termination of the guardianship and suggested alternate language. Mr. Aldridge agreed that the alternate words suggested the same purpose as the language contained in the legislation indicating the desire to make as few changes in the language as possible. Discussion ensued between **Senator Davis** and **Mr. Aldridge** concerning language relating to terminating the guardianship responsibility and authority, including the basis for termination and the methodology of the termination. **Mr. Aldridge** indicated the desire to keep the language as close as possible to the original language and predicted the future need to rewrite the section entirely. **Senator Hagedorn** echoed Senator Davis' concerns about wording specifically concerning the number of times the word "or" was used. **Mr. Aldridge** clarified stating that consistency of language in the legislation and that different alternatives were the reason for repeating the word "or" as many times.

**MOTION:**

**Senator Davis** moved that **S 1247** be referred to the 14th Order for amendment. Seconded by **Senator Bock**. The motion carried by **voice vote**.

**S 1248**

**Relating to Testamentary Appointments of Guardians of Minors - Robert Aldridge** stated the ability of a parent to appoint a guardian for a minor or developmentally disabled child has been in the Idaho Probate Code for many years. This procedure provides an inexpensive and quick way to get a guardian in place for a minor or developmentally disabled child if the parent dies. However, a question not answered in the current code is how to proceed if the nominated guardian does not or cannot, accept the nomination. Normally, the will making the nomination will have a priority list of additional nominations, but the Idaho Probate Code does not provide any guidance about the use of those additional nominations.

This bill will provide a clear solution to the situation by providing in Section 1 a method, paralleling the method used for the first named nominee to be guardian. It also validates the use of a priority list of nominees in the will. The bill imposes a thirty day time limit, since it is essential that a guardian be put in place as quickly as possible, and also describes other situations in which the next named guardian could proceed, such as the death or declination to act or ceasing to act of the proposed guardian. Section 1 also makes some technical changes in wording.

Section 2 preserves and clarifies the right of a minor, if age 14 or more, to object to the appointment and the effect of such an objection. Basically, the next nominee then can accept appointment, but the minor still has the right of objection to that nominee.

**Senator Hagedorn** questioned the language about filing notices of declination. **Mr. Aldridge** clarified. **Senator Davis** asked what the minor did during the 30 day interim period when the named guardian could accept or decline. **Mr. Aldridge** explained possible options and the limitation of those options. **Senator Davis** questioned language in reference to a situation in which the appointed guardian fails to accept the guardianship within 30 days thereby defaulting responsibility to the alternate guardian and that the language indicated each designated guardian or alternate would each have a 30 day right to decline. **Mr. Aldridge** agreed. **Senator Bock** questioned how the thirty day waiting period and appointment of a temporary guardian inter-relates with the provisions of the will. **Mr. Aldridge** recounted how an independent action could be filed after the finalization of the will. **Senator Bock** further questioned concerning the time within the thirty day period if decisions are needed to be made about the minor. **Mr. Aldridge** indicated that there would be a list in place of priorities as to who can make medical decisions in the event a guardian has not been appointed.

**MOTION:**

**Senator Hagedorn** moved to send **S 1248** to the floor with a do pass recommendation. Seconded by **Vice Chairman Vick**. The motion carried by **voice vote**.

**S 1249**

**Relating to Probate - Robert Aldridge** said Summary Administration under Idaho Code § 15-3-1205 and the Small Estate Affidavit under Idaho Code §15-3-1201 have for many years been thought by the practicing bar and by courts to be exempt from the three year limitation on general probate proceedings under Idaho Code §12-3-108. This has allowed those two procedures to be an easy, efficient, and inexpensive way to pass property to the correct heirs if a standard probate is barred by the three year limitation.

Recently some courts have held to the contrary, and in some districts, judges in the same district have ruled differently on that question. This has lead to confusion and to arbitrary denial of the procedures in cases where they should be allowed. There are very limited, and very expensive, alternatives if summary administration cannot be used.

This bill eliminates that confusion by clearly stating that the two procedures are not subject to the three year limitation.

**MOTION:**

**Senator Hagedorn** moved to send **S 1249** to the floor with a do pass recommendation. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

**S 1250**

**Relating to Protected Persons - Robert Aldridge** explained Idaho Probate Code has had a long-standing provision, in section 15-5-408(b)(5), that the granting of a conservatorship has no effect on the capacity of the protected person. The Code was silent as to the effect of the granting of a guardianship on such capacity. It had been the opinion of the practicing attorneys that the granting of a guardian or conservator did not remove the ability of a person to undertake testamentary actions, such as a will.

In 2011, in the case of *Rogers v. Household Life Insurance Company*, the Idaho Supreme Court held that a person for whom a full guardianship had been granted had no contractual capacity. In a 2012 case, *In re Conway*, the Idaho Supreme Court upheld a will done by a person for whom a limited guardianship and conservatorship had been granted, looking only to the standard tests for capacity for making a will. These two cases have raised numerous questions in the practicing bar about what actions can and cannot be taken by a person under guardianship or conservatorship. Great confusion has resulted.

In Sections 4, 5, and 6, a general guardianship or conservatorship removes contractual capacity, as the Idaho Supreme Court held in *Rogers*, but does not automatically remove testamentary capacity.

In Section 1, it states that the granting of a temporary or permanent guardianship or conservatorship does not have any effect on the testamentary capacity of the person, and defines what testamentary capacity covers.

The bill also clarifies that all of the standard claims, challenges, or defenses regarding the validity or effectiveness of the exercise of testamentary capacity remain valid. Therefore, lack of capacity, undue influence, and similar grounds will still be available to challenge the validity of a testamentary document.

This bill merely states that the granting of a conservatorship and/or guardianship does not automatically remove testamentary capacity. It does not disturb the holding of the Idaho Supreme Court in *Rogers* that the appointment of a guardian in and of itself removes contractual capacity.

**Senator Davis** voiced his understanding of Section 1 concerning a temporary or semi-permanent conservatorship and the relation to testamentary capacity. **Mr. Aldridge** agreed with Senator Davis' understanding. **Senator Davis** continued questioning the language about testamentary capacity. He asked if the word "include" means "defined as" in reference to testamentary capacity. **Mr. Aldridge** clarified that the language provides a base list of things that are clearly testamentary capacity and that ultimately the court would decide these things because the court will examine principles set forth in the language and make a determination. **Senator Davis** reviewed language concerning evidence of testamentary capacity asking if his understanding of the language was correct. **Mr. Aldridge** agreed. **Senator Davis** then examined language concerning a person who has a conservator appointed and has no power to make a contract of any kind and asked if that language was not in conflict with later language. **Mr. Aldridge** stated that the later language was specific to contracts and would be left alone. **Senator Davis** questioned why the person had the ability to modify a contract but not the statutory ability to create. **Mr. Aldridge** stated he did not think they had the ability to modify. The sole purpose of the language was to allow them to change the flow of beneficiaries which uses a lower standard of capacity, than the whole concept of whether to enter into a contract. **Senator Davis** voiced concern why an incapacitated person could modify a contract but could not make a contract. **Mr. Aldridge** acknowledged the whole concept of capacity is very complicated and further explained the nature for the current legislation before the Committee. He further stated the intent was to keep the new language specific and simple and to not touch the whole area of contractual capacity.

**MOTION:** For lack of a motion the bill will remain in Committee.

**ADJOURNED:** There being no further business, the meeting adjourned at 2:55 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

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Marian Smith  
Assistant to Majority Leader

**AMENDED AGENDA #1**  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Wednesday, February 05, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<b>MINUTES</b>	Approve Minutes of January 17, 2014	Senator Mortimer & Senator Lakey
	Approve Minutes of January 20, 2014	Senator Nuxoll & Senator Bock
<a href="#"><u>RS22668</u></a>	Relating to the Juvenile Correction Act	Senator McKenzie
<b>DOCKET NO.</b> <a href="#"><u>11-1101-1301</u></a>	<b>Idaho State Police Pending Rules</b> Rules of the Idaho Peace Officer Standards and Training Council	William Flink, POST Division Administrator
<a href="#"><u>S 1251</u></a>	Relating to the Peace Officer Standards and Training Council	Rory Olsen, POST Deputy Administrator

COMMITTEE MEMBERS

Chairman Lodge  
Vice Chairman Vick  
Sen Davis  
Sen Mortimer  
Sen Nuxoll

Sen Hagedorn  
Sen Lakey  
Sen Bock  
Sen Werk

COMMITTEE SECRETARY

Carol Deis  
Room: WW48  
Phone: 332-1317  
email: [sjud@senate.idaho.gov](mailto:sjud@senate.idaho.gov)

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, February 05, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** Senators Davis and Mortimer

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:33 p.m. and asked the secretary to call the roll.

**MOTION:** **Senator Lakey** moved to accept the minutes of January 17th. **Senator Bock** seconded the motion. Motion carried by **voice vote**.

**MOTION:** **Senator Bock** moved to accept the minutes from January 20th. **Senator Werk** seconded the motion. Motion carried by **voice vote**.

**RS 22668** **Relating to the Juvenile Correction Act - Senator McKenzie** stated that there was a small change to Section 4 of 20-505 and that he would give a brief background. He stated that he had a case where a juvenile was charged with two different cases; one was possession of paraphernalia for smokeless tobacco and the other was possession of alcohol. **Senator McKenzie** said that the paraphernalia charge began in adult court, but because it was a crime that was not accepted by the Juvenile Correction Act it got bumped to juvenile court and then received a diversion. He stated that the case involving alcohol stayed in adult court, because of the way the section is written. He stated that crimes of possession of alcohol or tobacco that are crimes only because an individual is a minor still stay in adult court. The court has discretion to send those cases to juvenile court; however when the case went to juvenile court the judge stated that they routinely deny them. Subsequently, the case returned to adult court, which raised the issue why children were sent to adult court when they committed an act that was a crime solely because they were a minor. **Senator McKenzie** stated that this change would mean that, if the act was a crime because they were a child, it would go to juvenile court. If it was a crime that would be a crime even if they were an adult – then it would stay in adult court. He stated that this change would give more opportunities to deal with issues in the juvenile court system and will not remain on their adult record and negatively affecting their lives.

**MOTION:** **Senator Bock** moved to print **RS 22668**. Seconded by **Senator Hagedorn**. Motion carried by **voice vote**. **Senator Lakey** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, he has prosecuted some of these cases and has a conflict but still wishes to vote on **RS 22668**.

**Chairman Lodge** asked Senator McKenzie if he had discussed this change with the counties where this would have an effect on their Juvenile Court System. **Senator McKenzie** replied that he had circulated the information and that there were some concerns over the smaller fines and court costs.

**PASSING OF GAVEL:** Chairman Lodge passed the gavel to Vice Chairman Vick to present the Rules Review.



**Idaho State Police Pending Rule**

**Rules of the Idaho Peace Officer Standards and Training Council - William Flink**, Division Administrator, explained that the first purpose of the proposed rule amendments was to better define minimum employment standards for law enforcement officers. These proposed amendments will assist POST in complying with rulings of the Idaho Supreme Court by clarifying vague terms that cause individuals of common intelligence to necessarily guess as to their meaning and differ as to their application. The amendments are needed to prevent arbitrary or discriminating enforcement of their rules and a better venue to prescribe standards in determining candidates suitability for law enforcement employment. **Mr. Flink** stated that they were enhancing their definition of "drug abuse", "misdemeanor" and "driving under the influence" as it related to their minimum employment standards.

The second purpose of the rule change was to make available to students attending POST approved training the same due process provisions when applying for such training. He said that the current IDAPA Rule 1111.01-54 states that the POST council may take into consideration the commission of any act or offense that involves moral turpitude to ensure that an applicant is of good moral character and warrants the public trust. The purpose of the requirement is to prohibit persons who engage in dishonest, unprofessional, unethical or immoral conduct from becoming law enforcement officers, as well as protecting against acts of conduct which may endanger the safety and welfare of others. At the present time, the definition of "moral turpitude" has been left to the POST Division Administrator or Council. The term has been used in correlation with disqualification throughout the nation's history. **Mr. Flink** stated that, in Idaho, the courts have defined "moral turpitude" to be an act of baseness, vileness or depravity. In the due process language the POST Council met with the three college law enforcement managers to ensure that candidates going through training did not run into eligibility issue after graduation. **Mr. Flink** explained the Council propose that an applicant can be rejected who has committed any act involving moral turpitude, even if they have never been charged by a law enforcement agency. Under Section 3, an applicant committing any act involving moral turpitude may be accepted upon approval of the POST Division Administrator, provided the applicant's agency head, with knowledge of the facts and circumstances concerning the act, recommends the approval. In Section 55 concerning marijuana, an applicant shall be rejected who has used marijuana in the last three years, while employed as a law enforcement officer or in a position of public safety—regardless of that use in the last three years. In the past the policy has been not to admit anyone who has used drugs ever in their life, it has become increasingly difficult to find applicants that have never used drugs.

**Senator Bock** stated that he noticed that anyone who has used marijuana in the last three years be rejected and inquired into the legal use of marijuana in neighboring states. **Mr. Flink** responded that they have plans to insert the word "unlawful" to be able to omit other language and that Marinol, a prescription cannabis drug is not included in the prohibited substances for this reason. **Senator Hagedorn** said that a few things needed clarification, such as the acts committed by an applicant that did not require any documentation by law enforcement. **Mr. Flink** responded that, in the application process, there are many forms to fill out concerning character, which are taken at the applicant's word. Many of the agencies conduct background checks and polygraph examinations and that is where any untruthfulness in their application is found. **Senator Hagedorn** inquired into the validity of claims made against an applicant. **Mr. Flink** stated that there was a follow up from the hiring agency, which would ensure that due diligence was maintained in any accusation against an applicant. **Senator Werk** asked about "moral turpitude" and if homosexual conduct was included in that definition. **Mr. Flink** answered that it was not an issue they looked at and that police officers were a microcosm of

society which included all types of individuals. If there was a documented crime on record then they would have to look at it, but he has never had a case of that nature in the 30 years he has worked in certification. **Senator Werk** inquired into expunged crimes or pardons and if they could truthfully answer that they had not committed a crime they had been pardoned for. **Mr. Flink** replied that a suspended conviction still counted as a conviction but a pardon was a different matter, as it was the Governor essentially stating that the crime did not occur.

**Chairman Lodge** stated that no single individual would make a decision but that it would be brought before the Council. **Mr. Flink** responded that he either approves an application or refers it to the POST Council, but does not reject an application himself. **Vice Chairman Vick** inquired if that current practice was going to be included in the rule. **Mr. Flink** responded that it was something that could be added to the rule. **Vice Chairman Vick** stated that it would be a good idea, in his opinion, to add that practice to the rule.

**PASSING OF  
GAVEL:**

Vice Chairman Vick passed the gavel back to Chairman Lodge.

**MOTION:**

**Vice Chairman Vick** moved to approve **Docket No. 11-1101-1301**. The motion was seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

**S 1251**

**Relating to the Peace Officer Standards and Training Council - Rory Olsen**, POST Deputy Administrator, stated that **S1251** was a proposed amendment to Idaho Code §1951-01, which provides definitions to terms referred to throughout Chapter 51. The Council was seeking to add "voluntary reserve officer" to the definition of peace officer in Section 1951-01D. Currently volunteer reserve officers are not included in the definition of peace officers though they have existed since 1989 and serve as a vital asset to law enforcement agencies that have limited resources. The POST Council and their legal advisors thought it would be prudent to include voluntary reserve officer in the definition of peace officer to prevent any possible legal challenges that might arise regarding legal authority. **Senator Bock** inquired into the practical effect of the change. **Mr. Olson** responded that there was concern that an individual could challenge the voluntary reserve officers authority in court. **Senator Hagedorn** stated that there was a county that utilizes a "posse" and inquired if that was recognized in Idaho Code. **Mr. Olson** replied that he was not aware if posses were addressed in statute but that they did not have arrest powers. **Vice Chairman Vick** inquired into the authority of voluntary reserve officers. **Mr. Olson** replied that the two main roles were Reserve Level 1 and Reserve Level 2. For Level 1 an individual must attend much of the same training that a patrol officer does and can function on their own, but they must have a fully certified officer to supervise them while on duty. He stated that Level 2 is more akin to a ride-along and must be in the same vicinity of the certified officer. **Vice Chairman Vick** inquired into what authority a volunteer reserve officer possesses. **Mr. Olson** responded that the current definition states that the level 1 individual only has authority while on duty. **Senator Lakey** said that volunteers provide a valuable service and asked if the authority of a peace officer was defined in the section. **Mr. Olson** answered that most of the statutes that he has read referred back to the definition currently under consideration.

**MOTION:**

**Senator Bock** moved to send **S 1251** to the floor with do pass recommendation. Seconded by **Senator Lakey**. Motion carried by **voice vote**.

**ADJOURNED:**

There being no further business, **Chairman Lodge** adjourned the meeting at 2:36 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

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David Ayotte  
Majority Staff Assistant

AGENDA  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Friday, February 07, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS22824</u></a>	Relating to Justice Reinvestment	Representative Wills

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Vick

Sen Davis

Sen Mortimer

Sen Nuxoll

Sen Hagedorn

Sen Lakey

Sen Bock

Sen Werk

COMMITTEE SECRETARY

Carol Deis

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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, February 07, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Nuxoll, Hagedorn, and Lakey,

**ABSENT/ EXCUSED:** Senators Mortimer, Bock and Werk

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:30 p.m.

**PASSING OF GAVEL:** Chairman Lodge passed the gavel to Vice Chairman Vick to present **RS 22824**.

**RS 22824** Relating to the Idaho Criminal Justice System - **Chairman Lodge** said included in your packet with **RS 22824** is a sheet entitled "Justice Reinvestment in Idaho" which explains some of the background, challenges and impact of this legislation.

**MOTION:** **Senator Davis** moved to print **RS 22824**. Seconded by **Vice Chairman Vick**. The motion carried by **voice vote**.

**PASSING OF GAVEL:** Vice Chairman Vick passed the gavel to Chairman Lodge.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 1:33.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

**AMENDED AGENDA #1**  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Monday, February 10, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
MINUTES:	Approve Minutes of January 22, 2014	Vice Chairman Vick & Senator Hagedorn
<a href="#">RS22679</a>	Relating to Gang Enforcement Act	Ellie Smouza, Nampa Prosecuting Attorney
<a href="#">RS22810C1</a>	Relating to Civil Actions	Robert L. Aldridge, Trust & Estate Professionals of Idaho, Inc.

COMMITTEE MEMBERS

Chairman Lodge  
Vice Chairman Vick  
Sen Davis  
Sen Mortimer  
Sen Nuxoll

Sen Hagedorn  
Sen Lakey  
Sen Bock  
Sen Werk

COMMITTEE SECRETARY

Carol Deis  
Room: WW48  
Phone: 332-1317  
email: [sjud@senate.idaho.gov](mailto:sjud@senate.idaho.gov)

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, February 10, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** Senators Davis

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:32 p.m. and asked the secretary to call the roll.

**MINUTES:** **Vice Chairman Vick** moved to approve the Minutes of January 22, 2014 as written. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**RS 22679** **Relating to Gang Enforcement Act - Ellie Somoza**, Nampa Prosecuting Attorney, explained the proposed amendment to the Idaho Criminal Gang Enforcement Act is to conform the legislative intent regarding the Act. Currently, the enhancement only applies to felony charges filed by information or indictment. This amendment would allow the gang enhancement to be filed in a misdemeanor or juvenile case. There are penalties set forth in Idaho Code §18-8503, Subsection (a) related to misdemeanors. As the statute is currently written, it would only apply to a misdemeanor if that misdemeanor is combined with a felony in an indictment or information. On its own a misdemeanor could not be filed with a gang enhancement.

**MOTION:** **Senator Werk** moved to print **RS 22679**. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

**RS 22810C1** **Relating to Civil Actions - Robert L. Aldridge**, Trust and Estate Professionals of Idaho, Inc., stated this bill concerns the use of automated external defibrillators (AED). They are a portable device that checks heart rhythm and, if needed, can send an electric shock to the heart to restore a normal rhythm. When this statute came into existence in 1999, AEDs were relatively primitive and could be mishandled in use, potentially causing damage to the person being treated. Now AEDs are extremely automated, the device will not send the electric shock unless the user is walked through the process of the voice commands directed by the unit and will not be discharged unless the processing is correct. The original statute, based on the lower level of technology, required that a physician (osteopath) prescribe the AED, and the physician had to monitor the training. None of that is now needed. Physician requirements are routinely ignored and many AEDs are bought and used without the physician's involvement. AED's can be freely bought at multiple sources without a prescription. Idaho Code 5-337 reflects a requirement in the statute that is irrelevant with the new AEDs and the technology that has dramatically improved since the adoption of the old language.

**MOTION:** **Senator Nuxoll** moved to print **RS 22810C1**. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 1:43 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary



JOINT  
**SENATE JUDICIARY & RULES COMMITTEE**  
**AND**  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
1:30 P.M.  
Lincoln Auditorium  
Wednesday, February 12, 2014

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">S 1331</a>	Relating to Justice Reinvestment	Senator Lodge, Representative Wills and Marc Pelka, Policy Recommendation, Program Director

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Vick

Sen Davis

Sen Mortimer

Sen Nuxoll

Sen Hagedorn

Sen Lakey

Sen Bock

Sen Werk

COMMITTEE SECRETARY

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MINUTES  
JOINT MEETING  
**SENATE JUDICIARY & RULES COMMITTEE**  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**

**DATE:** Wednesday, February 12, 2014

**TIME:** 1:30 P.M.

**PLACE:** Lincoln Auditorium

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

Chairman Wills, Vice Chairman Luker, Representative(s) Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline and Ringo

**ABSENT/ EXCUSED:** Vice Chairman Luker, Representative(s) Nielsen, Bolz, Perry, Sims, Dayley, Horman, Malek, Trujillo, McDonald, Burgoyne, Meline and Ringo

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:34 p.m.

**S 1331**

**Relating to Justice Reinvestment - Chairman Lodge** stated this is an informational meeting. The Committee will not be taking a vote on the legislation. This bill is a work in progress and testimony will be taken on the legislation.

**Representative Wills** explained that the working group has spent months with all parties invested in this legislation along with the Council of State Governments (CSG), who extrapolated the data. Analysis of the data pointed to some major changes that Idaho needs to make in the justice system. Two items that were of major concern when the project initially began were: 1) the safety of the public; and 2) taking low-risk individuals out of the justice system and placing them in probation and parole or in local community programs where they can receive help to gain the desire and skill-sets to get back to their communities as a taxpayer.

The objective was to reduce recidivism and its high cost. If nothing changes in the justice system, in two years, Idaho will have to build another prison at a cost of \$235 million. The Justice Reinvestment legislation will allow the State to save as much as \$288 million. This is the first step in a five year process.

**PRESENTATION: Justice Reinvestment - Marc Pelka,,** (Council of State Governments) CSG, Program Director, explained that in April 2013 the CSG Team met with stakeholders, policy makers and state leaders concerning the States interest in Justice Reinvestment. Justice Reinvestment reflects the CSG's Justice Center. The Justice Center is an organization that is non-partisan and non-profit, which grew out of state policymakers awareness of the growing complexity of criminal justice issues across the country. As a result of the members of CSG, the Justice Center was created to provide a range of technical assistance on projects ranging from mental health, substance use issues, youth, law enforcement, re-entry from jail and prison, and justice reinvestment. Justice Reinvestment is the most intensive type of technical assistance that is provided by CSG. Beginning in June, the main criteria for Justice Reinvestment was met, which was a consensus across leadership of all branches of state government. The State's project was launched when the Governor, Chief Justice and legislative leaders all commissioned a study that was an intensive review of data analysis. Tens of thousands of records were analyzed

from across the State's criminal justice system starting from the crime and arrest, sentencing, probation and parole, jail, prison, parole decision making, release and recidivism. The State agencies and local government provided the range of data and CSG engaged in an intensive review and matched what the analysis revealed with first-hand perspective from criminal justice practitioners and other leaders from around the State. There were a number of focus groups that convened along with on-line surveys, phone calls, meetings, and trips around the State to learn about the data that was being analyzed and the analysis lined up with first-hand experiences. Tying all of this together were two oversight groups that Idaho created. A Legislative Interim Committee of 11 members that met on four occasions to review analysis and receive a report last month from CSG (attachment 1). As well as a 30 plus member Working Committee Group of cross disciplines across the organization to provide feedback.

CSG was brought to Idaho because policymakers and state leaders recognized the growing cost of corrections. They realized the cost of corrections was the second fastest growing budget item for states. It is a very difficult problem to analyze. Interest in these issues does not end with cost, but with recidivism and public safety. The main metrics that CSG looks at when they look at the overall goals of the project is growth in spending on corrections, and how those costs can be contained with the Justice Reinvestment process. How to invert growth that is projected in prison populations and how states can drive down the rates of recidivism. CSG has worked with 18 other states on this same issue. States own the project, CSG is only the technical assistance provider which presents the analysis and receives direction from the Working Group to reach a consensus in the final report that is presented on the issues.

Idaho has the eighth highest incarceration rate in the country. When they look at the states that are also high in that list many of them are the deep south states. CSG looked at different populations coming into the State's system, how long they are staying, and who is coming back. They looked at recent trends involving prison populations and saw that the State experienced the second fastest rate of growth in the country on corrections. CSG analyzed where the State is projected to grow on these issues and saw a 16 percent projected increase between 2015 and 2019. Working with the Department of Corrections, they put into the report a cost of accommodating the growth at \$288 million. Sharing this information with sState leaders, they know that building more prisons for that capacity to address these population pressures will do nothing to reduce recidivism in the State. This information led CSG to the biggest challenges identified in the State which were:

1. Revolving door of recidivism. When CSG looked at the State's felony sentencing disposition, they saw a very large share going to a non-prison terms. These terms are placed in a "Rider" program (retain jurisdiction option) which are followed by a term of probation, if the individuals complete the prison program. Unfortunately, 30 percent of the felons initially diverted to those options are re-offending and wind up inside the prison system within three years. Idaho is a low crime State and has the third lowest index crime rate in the country but the States recidivism rate is higher than the national average. The numbers reveal that 53 percent of individuals released from prison will return within three years. When CSG looks at the same measure for individuals placed on the front-end diversions they are not completing those programs successfully and are going to prison. These are not the goals of the courts, which determine, based on specific issues of these cases, that the individuals would be ready for supervision or a Rider program.
2. Idaho has an inefficient use of prison space. 41 percent of people in prison are individuals who are revoked from a term of probation and parole supervision. 25 percent of people in prison are either participating in a Rider program or

have gone into a Rider and failed, becoming part of the prison population. In comparison with states across the country, they have not found another with this type of composition in the prison population. They looked at how long offenders entering into prison are serving for various sentences. Looking at the length of stay for property and drug offenses, compared with the national length of stay on average, they saw that Idaho is almost two times the national average for these offenses. Also, a larger share of our prison population is comprised of individuals sentenced to prison for property and drug offenses. If the State could improve the outcomes for probation and parole supervision and the outcomes for the diversion programs, then it could prioritize use of prison space for individuals with non-violent offenses. It would address the growth in spending for corrections and generate resources that can be moved into the areas of the system, which are in need of policy and funding to achieve the goals that are being sought by the front end of the system in the sentencing decisions.

3. Insufficient oversight to track Idaho's recidivism-reduction efforts. Idaho is looked at by a number of states in a positive light for what it provides to the front end of the corrections system but risk and need information assessment must be created for its population. The offender population can be navigated through a range of programs such as community based through the SUDS Program, or in prison through the Rider program, or prison based programs. Looking at Idaho's overall systems, from a systems view, there is an opportunity for greater oversight to make sure that those risk-assessments are producing validated results. Assuring that there is sufficient data and IT capacity to assess and ensure that the goals of the State's programs for recidivism reduction are being met.

In the months that followed, CSG worked with the Working Group Oversight Committee in one-on-one meetings including stake holders in the State's system to find a consensus point. There is no boiler plate for Justice Reinvestment because it reflects the challenges facing each state individually. There must be consensus found for the issues of recidivism, increased public safety, and reigning in the growth of spending. There are 13 policies listed in the Policy Framework Report (attachment 1) that have been grouped into three strategies.

1. Strengthen supervision and diversion programs to reduce recidivism. This will reveal a number of areas involving the way offenders are sanctioned while they are on probation and parole supervision. In statute, it allows for probation and parole officers to use administrative responses to apply "swift and certain" responses to violations, as opposed to allowing the offenses to stack up, or relying on reappearing before a court to get approval to issue that response. The analysis shows that, in terms of offender behavior change, the best impact occurs when there is swift, certain, and consistent action tied to the underlying violation.
2. Increasing community-based treatment funding. Moving this action further upstream so that behaviors and needs will not escalate to the point at which decisions are made to place someone back in prison. Training the workforce and providing funding to make sure probation and parole officers are equipped to reduce recidivism in the State. Form a victim-restitution group to look at the intersections between community based supervision and victim restitution; addressing the interrelationship between supervision and legal financial obligations.
3. Prioritize prison space for people sentenced for violent offenses. Provide more information up-front for judges making decisions regarding sentencing options and how best to respond to violations of parole with swift and

certain sanctions at the community level; to form a seamless continuum of responses to make it clear to people on parole supervision that they will be held accountable for the violations they commit while on supervision. For individuals whose behaviors or risks have risen beyond a community based response the decision must be reached swiftly that they are no longer eligible to remain on parole and must be revoked. The policy includes a determinate period of confinement for people who are not convicted of a new offense but have violated their condition of supervision and it is clear up front how long they will serve if they do not comply with their conditions. Individuals will be forced to go back on supervision to comply with those conditions to demonstrate ability to improve outcomes.

**Rider program and the probation and prison term.** When CSG looked at recidivism rates they saw a variation based on risk-level and the type of sentences that individuals receive. If the goal is to reduce recidivism by the greatest degree, the sentence will vary based on whether the person is placed onto probation, Rider option, or into prison term. Providing courts with that information, on the front end of the system, will ensure that current information is made available to decision makers in the system.

**Length of stay of people sentenced to prison for property and drug offenses.** CSG sought advice from the members of the Working Group and from justice system individuals around the State on how to address this challenge. CSG comes into states and provides base-lines and comparisons in many different ways. Sharing experience of what has worked in other states across the country. The drivers of growth of spending in the system and the length of stay for those sentenced for property and drug offenses consumes a great share of tax dollars. This limits the State's ability to use those resources for when those individuals transfer to the community onto supervision. In the report, it addresses spending issue and how to structure the parole system to prioritize people sentenced for violent offenses. It creates a window of time between the 100 percent of the fixed term and 150 percent of the fixed term, in which someone will complete the programming inside the prison, get themselves ready and then be paroled to return to the community. Probation and parole must be better funded, better equipped, and have better workforces in order to manage behavior and reduce recidivism. The place to have the risk driven down to the greatest degree is by affording programs and treatment to change offender behavior, to address the risk and needs, and to hold offenders accountable to sanctions. Prisons work the best when they imprison offenders who have committed the most harm to the community; these are the individuals to incapacitate. When it comes to changing offender behavior to reduce recidivism there must be an effective probation and parole system with programming to address the criminogenic needs.

Oversight is where you make sure you are getting the best bang for the buck in terms of funding for recidivism reduction programs and assessments. Make sure the risk assessments are validated routinely under a policy regarding that procedure. Providing accurate risk assessments on the types of offenders coming into the system to assure that decision makers are receiving the most accurate information possible.

On the programming end make sure that the money is spent on programs that are working and not just auditing but evaluating the programs for their impact on recidivism. CSG has seen states across the country using programs that are reducing recidivism or having no impact on recidivism and in some cases actually increasing recidivism.

Justice Reinvestment is a process that states compete for and do not pay an expense on. In terms of cost of this grant, there is no cost to states but there is a personnel cost in terms of working with CSG. Policymakers must understand the importance of data and IT capacity to make sure that your programs are working and systems are producing the outcomes the State is seeking.

The 13 policies within the 3 strategies (attachment 1) are CSG's best attempt, in the report, to reflect the intensive data analysis that has been completed, oversight they have been given and the input they have gotten from across the criminal justice system to contain the cost of corrections. On the line curve in the report (attachment 1) it averts the \$288 million projected to address the growth in the system. It bends the curve on the prison population projection, but does not decrease the size of the State's prison population. This reflects CSG's work with Idaho in looking at the data system to find consensus, and it appears in the report of policies that increase public safety, contain the cost of corrections, and drive down recidivism in the State. The key part to the report is the recommended reinvestment, on page 6, which reflects details of the reinvestments over a five year period. Some of those investments are probation and parole officer training, increase in the workforce for supervision of probation and parole, and community based programming and treatment. The combined cost of providing those investments is \$33 million over the 5 year period. This will accomplish the goal of averting the correction growth, reducing spending on corrections, and reinvesting into areas to increase public safety.

**Senator Lakey** asked how CSG arrived at the \$288 million number. **Mr. Pelka** explained in consultation with the Department of Correction forecast committee for their prison population projection. This contains a number of estimates regarding growth in the system including admissions to prison, length of stay in prison, releases, and recidivism. CSG modeled the impacts of these policies in the framework as conservatively as possible, reflecting no impact until the beginning of January 2015. Assuming a prospective impact for these categories to track the inputs below on that projection. Cost was based on marginal cost, based on number of people, cost of incarceration on a per diem basis, beds used and also the cost of a prison averted.

**Senator Lakey** asked for clarification in the costs involved in corrections. The CSG Justice Reinvestment Report shows that Idaho has one of the highest incarceration rates; but one of the lowest crime rates. How do you respond to having a low crime rate because the bad guys are in jail? **Mr. Pelka** answered CSG plotted on an x y axis the State's incarceration and crime rates comparing them with a number of states, including the Dakotas, New York, and New Jersey. These states also share a low crime rate, but have a lower incarceration rate. CSG findings across the country show a number of states which had similar trends with overall static numbers regarding incarceration and crime rates, but finding no clear relationship. States have seen reductions over the last ten years in prison populations along with increases in crime rates. There seems to be no direct relationship in what the data shows regarding those two factors. Although Idaho has the third lowest crime rate in the country the State has a higher than average recidivism rate. The probation and parole policies for diversion are not addressing the recidivism rate. CSG in conjunction with policymakers has worked out how to achieve a greater return on investment for Idaho's criminal justice system investment. Targeting a 15 percent reduction in recidivism over the next five year period is the major goal for the States system.

**Senator Lakey** questioned the outcomes from other states that have implemented CSG's suggested changes. **Mr. Pelka** replied this was a question they got early on from Chief of Police Hall of the Working Group. CSG gave Chief Hall a breakdown of all states that have enacted Justice Reinvestment Policies as they have tracked a window of time for those states to determine the impact on crime rates. Every state of this group, except for one, has seen a reduction in crime rates and many saw double digit reduction in the rate. The one exception is New Hampshire. CSG looked at probation and parole recidivism rates and saw they remained flat or went down in that state.

**Senator Hagerdorn** asked do you have a metric for victim satisfaction. **Mr. Pelka** answered a member of Idaho's Parole Commission, Lisa Bowstaff, is developing a metric for victim satisfaction across the State. In conjunction with that metric will be implementation of a victim needs assessment to look at the capacity of services to meet the need that exists. This is a level of metric that CSG would like to have in all the states. Pennsylvania has put money into a victim satisfaction survey. The collection of victim restitution has shifted in the way they analyze the system based on the feedback and that led to the victim restitution policies you see in the framework of the report. There is a very diverse victim advocate constituency in this State and others.

**TESTIMONY:**

**Bryan Taylor** - Canyon County Prosecuting Attorney, stated in reviewing the legislation their agency agrees with adding funds to probation and parole for treatment focused programs and collection of restitution for victims. Their statistics reveal that 84 percent of all offenders that process through the criminal justice system do not go to prison. Individuals who violate parole and probation end up back in the system; needing true treatment and a need for the resources. Canyon County prosecuting Attorneys disagree with presumptive parole, the probation and parole matrix, the presumptive termination of parole and probation, and the underlying premise that requires decisions to be based upon the imprecise classification of violent and nonviolent offenders. In the legislation, there is terminology in regards to violent offenders listed in Idaho Code §1925-20, Section 9-20-219, Subsection 7 C, page 13 and 14. In the list there are numerous felonies that are not constituted as violent offenses under that category such as: stalking, no contact order violations, aggravated DUIs, domestic violence, injury to children, attempted strangulation, threatening judges and elected officials, as well as numerous others. Their agency believes to put this imprecise classification in this legislation exposes the State to great jeopardy of public safety. Do you want to risk public safety to save money.

**Senator Davis** asked for clarification of what is missing in the list of violent crimes on page 13 and 14. **Mr. Taylor** answered there are numerous crimes in the list that the attorneys deal with that should be looked at because they constitute as violent felonies, especially domestic violence. Changing the sentence times exposes the State to placing public safety in jeopardy. **Senator Davis** asked is the matrix as an issue. The matrix is not addressed in the legislation but would be promulgated as a result of the passage of the legislation. **Mr. Taylor** replied that the State should be careful of creating a box that every crime can fit into, because each case is its own unique case. Individuals that may come in on a nonviolent crime today may have a lengthy criminal history of all violent offenses. **Senator Davis** stated the State must move forward on this legislation. Does the Canyon County Prosecuting Attorney have a solution? **Mr. Taylor** responded the attorney's primary concern regards the legislation's presumptive probation and the termination. If the offender meets the standards of the matrix, then their probation is automatically terminated. Cases become fluid and you cannot put them in a matrix box. **Mr. Taylor** stated that they would provide proposed language to alleviate their concerns.

**Senator Werk** asked do the attorneys believe the outcome of enacting this legislation would make Idaho less safe. Although, similar legislation has been adopted in other states and has made those states safer. Is there anything that is special about Idaho that would make us counter to the trend that is seen elsewhere in the country? **Mr. Taylor** answered that focusing on and reinvesting into the correction system and treatment is absolutely necessary. The legislation does not address as much of the treatment component in the term corrections as is needed. If the offender gets placed on probation and is successful or goes to prison and gets released it is giving the criminal the benefit of the doubt versus keeping the victims and the public safe. Once the offender meets the threshold they are released versus truly getting the treatment that is need.

**Senator Bock** asked what do you think is broken in our correction system that contributes to Idaho being the eighth highest incarceration rate in the nation. **Mr. Taylor** answered the correction system falls apart in the treatment component for these individuals, it is not strong enough in Idaho. Allocate more resources to the treatment component. This legislation has much to be commended in dealing with the correction system and the attorneys are excited to see that the State will be allocating more resources to the Department of Corrections and Bureau of Probation and Parole. These agencies are overwhelmed and overworked and do not have the ability to properly supervise the massive case loads. The offenders start falling through the cracks and they do not get the necessary treatment or supervision resulting in probation violations which place them back in prison.

**David High** stated his son has been in the prison system three times and they have seen the prison system from a different point of view. The very important conceptual change in the bill is that officers will be given the tools they need to address the parolees. The ability to apply sanctions for violations that are timely and proportional to the violation will greatly reduce recidivism.

**Grant Lobes**, Twin Falls County Prosecuting Attorney, stated the positive aspects of the bill are improving the probation and parole system. Better treatment, monitoring, and follow-up once offenders are released and better programs in the prison, along with monitoring and assuring payment to victims. Idaho has a Rider program which was specifically designed to be an alternative to prison. The CSG's data combines the Rider program and prison population in their numbers. If they subtracted 25 percent from the prison total, Idaho would not be eighth in the country. No other state has a Rider program.

**What is non-violent.** Not defined by the current offense of the offender, but by the offender. The Idaho system is designed to treat the individual as an individual and not treat everyone convicted of a particular crime. Their attorneys believe this is dangerous legislation as written. It erodes the ability of the judges to analyze cases on a case by case basis and along with the parole board. When you are required to release an offender at 100 percent or 150 percent of their determinant sentence that increases the chances of recidivism because these individuals may not have completed their programs. It does not take victim rights into account and it is overly generous to criminals.



**Senator Davis** stated in the presumptive parole language of the legislation, perhaps one of the requirements should be to require that the prisoners' programming must be completed before parole. **Mr. Lobes** responded if you guarantee a criminal soft treatment when he doesn't deserve it and take away from the system the ability of the judge and parole commission to deal with each offender individually based on the crime, you have dangerously diluted the system. Adding language that would require prisoners to complete their assigned programming before release would be a step in the right direction. The goal is to have offenders come out of the system as better people rather than just people who behaved for a short period of time knowing that if they did so they would be released.

**Senator Vick** said one of the complaints that he has heard offenders voice is that they cannot get to the treatment. What is the solution to help these individuals? **Mr. Lobes** answered that the State should make sure that the treatment is available. The problem in our State is that the treatment is not available or not effective. Currently there are problems with probation, parole, treatment and the opportunities that individuals who are in incarcerated are receiving. Before we fix them you are asking us to move to a system that mandates reduction in probation supervision and early release from prison. You are going to release offenders earlier into a system that is not effective.

**Geoffrey Talmon** - Idaho Freedom Foundation, and **Mark Henry**, Roman Catholic Diocese of Boise, Office of Prison Ministry, spoke in favor of the legislation. They both spoke to the subjects of violent versus non-violent classification and validation for risk assessment. Moral rehabilitation and reducing the barriers such as overdue financial obligations.

**NOTE:**

The presence of a quorum is required in order for a committee to act legally and officially. Due to a lack thereof, the members present listened to testimony from: **Mark Renick**, IMSI Hope Community Phase II; **Michael Kane**, Idaho Sheriffs Association; **Greg Bower**, Ada County Prosecuting Attorney; **Monica Hopkins**, ACLU; and **Judge Mike Wetherell**.

**ADJOURNED:**

There being no further business, **Chairman Lodge** adjourned the meeting at 3:43 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

**AMENDED AGENDA #1**  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Friday, February 14, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
Page Graduation:	Farewell to Committee Page Kaitlyn Parks	Senator Lodge
Minutes	Approval of January 24, 2014 Minutes	Senator Davis and Senator Lakey
Minutes	Approval of January 27, 2014 Minutes	Senator Mortimer and Senator Lakey
<a href="#"><u>RS22854C1</u></a>	Relating to Standard of Medical Care	Ken McClure, Idaho Medical Association
<a href="#"><u>RS22892</u></a>	Relating to Bad Faith Patent Assertion	Mike Reynoldson, Government Affairs Manager, Micron
<a href="#"><u>RS22842</u></a>	Relating to the Juvenile Corrections Act	Judge Varon
<a href="#"><u>RS22872</u></a>	Relating to Behavioral Health	Director Armstrong,
<a href="#"><u>RS22886</u></a>	Relating to Battery	Emily McClure, Idaho Medical Association
<a href="#"><u>S 1274</u></a>	Relating to Boating	Senator Keough

COMMITTEE MEMBERS

Chairman Lodge  
Vice Chairman Vick  
Sen Davis  
Sen Mortimer  
Sen Nuxoll

Sen Hagedorn  
Sen Lakey  
Sen Bock  
Sen Werk

COMMITTEE SECRETARY

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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, February 14, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Senators Davis, Mortimer, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** Vice Chairman Vick and Senator Nuxoll

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:31 p.m.

**MINUTES:** Minutes were not approved at this meeting.

**RS 22854C1** **Relating to Standard of Medical Care - Ken McClure**, representing the Idaho Medical Association, explained that this bill is designed to ensure that possible changes in the law that were not voted on and were not anticipated to occur that those cases will not occur. Under the Affordable Care Act there are a number of requirements that Centers for Medicare and Medicaid Services CMS adopted as quality guidelines. All insurers, having plans that qualify under the Affordable Care Act, also adopt their own quality guidelines. These quality guidelines are fine for reimbursement for those programs. The Idaho Medical Association's concern is that these guidelines could become a basis for a malpractice action. Idaho law is very clear that a physician or other healthcare provider is guilty or responsible for injury to a patient or has committed malpractice if he violates the community standard of care.

The community standard of care is the standard of care in that care community. The determination of how someone meets or fails to meet the community standard of care is determined by what a reasonable person with the same training, experience, and skill would do under the circumstances in that community. Communities are different, there is much greater access to more advanced care in some communities than in other communities. It is unfair, particularly in rural Idaho, to hold a healthcare provider to a standard that they cannot meet because they do not have an MRI or perhaps a neurosurgeon available.

The quality metrics that are set forth by CMS and insurance companies can continue to be used for reimbursement purposes; but they do not become a basis for any type of malpractice action. The metrics cannot be used to justify a physician's actions if the physician met the standard, nor can they be used to criticize a physician's actions if the physician has not met the standard.

**MOTION:** **Senator Werk** moved to print **RS 22854C1**. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

- RS 22892**      **Relating to Bad Faith Patent Assertion - Mike Reynoldson**, Government Affairs Manager, Micron Technology, stated the purpose of this legislation is to prevent bad faith assertions by non-producing entities, otherwise know as patent trolls. These entities do not produce anything. Patent trolls will acquire certain patents and send mass mailings to industries, such as semi-conductor or car manufacturer industries, informing those businesses that they have violated. In the letter the patent trolls state that they are in violation of a patent and for a simple licensing fee they will not litigate the patent. Businesses will often settle because it is extremely intimidating and expensive to defend against a patent infringement suit.
- MOTION:**      **Senator Davis** moved to print **RS 22892**. Seconded by **Senator Bock**. The motion carried by **voice vote**.
- RS 22842**      **Relating to the Juvenile Corrections Act - Judge Varin**, National Campaign to Reform State Juvenile Justice Systems, explained that the bill is to refine and improve the juvenile justice system by clarifying a judge's authority to dismiss a juvenile case when a juvenile offender has been granted an informal adjustment. The judge can dismiss a case when the juvenile offender has successfully completed a juvenile drug, mental health, or other authorized problem solving court program. The juvenile will have an opportunity to seek an expungement of their juvenile court records after their dismissal.
- Senator Davis** questioned line 3 of the bill and asked does the court have to be convinced of the threshold burden of proof? **Judge Varin** answered that it is not very clear what that standard is so it would be a preponderance standard. **Senator Davis** asked are the court proceedings an informal give and take between the court and the juvenile. Does it require that the juvenile provide some form of evidentiary proof to the court? **Judge Varin** responded that the juvenile court is a very informal court, some cases might be dismissed while others may have a hearing. How the procedures are handled may depend on the case. The processes and procedures can vary from court to court in the juvenile justice system.
- MOTION:**      **Senator Davis** moved to print **RS 22842**. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.
- RS 22872**      **Relating to Behavioral Health - Director Armstrong**, Department of Health and Welfare, said this bill will establish Behavioral Health Community Crisis Centers in Idaho. Law enforcement and hospital emergency departments are often the default provider of crisis intervention for Idahoans experiencing behavioral health crises. These centers are part of their overall plan for the renovation and renewal of Behavioral Health System in Idaho. Behavioral Health Community Crisis Centers are specifically designed to provide an effective and efficient alternative to incarceration and hospitalization. The crisis centers are designed to function as transitional de-escalation, stabilization, and community referral services.
- MOTION:**      **Senator Hagedorn** moved to print **RS 22872**. Seconded by **Senator Werk**. The motion carried by **voice vote**.
- RS 22886**      **Relating to Battery - Emily McClure**, representing the Idaho Medical Association, explained that the Idaho Medical Association had come before the Committee for a print hearing which printed bill **S 1259**. After this bill was printed concerns were raised that some of the language in that version of the bill could interact negatively with other sections of the criminal code in a way that had not been perceived and certainly was not intended.
- Senator Davis** asked is this a consensus bill now. **Emily McClure** answered she believed so.
- MOTION:**      **Senator Davis** moved to print **RS 22886**. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

**S 1274**                    **Relating to Boating** **Chairman Lodge** stated that Senator Keough has agreed to move her bill to Monday's agenda and also the Committee will approve the Minutes on Monday.

**PAGE**                    **Chairman Lodge** said Kaitlyn Parks, the Judiciary and Rules Committee Page,  
**GRADUATION:**       has been an outstanding Page, went the extra mile in her service to the Committee and we have truly appreciated all of her hard work.

**ADJOURNED:**       There being no further business, **Chairman Lodge** adjourned the meeting at 2:02 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

AGENDA  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Monday, February 17, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>S1274</u></a>	Relating to Boating	Senator Keough
<a href="#"><u>S 1221</u></a>	Relating to the Child Protective Act	Senator Guthrie
<a href="#"><u>S 1290</u></a>	Relating to the Juvenile Corrections Act	Senator McKenzie
<a href="#"><u>S 1340</u></a>	Relating to Civil Actions	Robert L. Aldridge, Trust & Estate Professionals of Idaho, Inc.
<a href="#"><u>S 1341</u></a>	Relating to the Idaho Criminal Gang Enforcement Act	Ellie Somoza, Nampa Prosecuting Attorney
Minutes:	Approval of January 24, 2014 Minutes	Senators Davis and Lakey
Minutes	Approval of January 27, 2014 Minutes	Senators Mortimer and Lakey
Minutes:	Approval of January 29, 2014 Minutes	Senators Nuxoll and Bock
Minutes:	Approval of January 31, 2014 Minutes	Senators Hagedorn and Nuxoll
Minutes:	Approval of February 3, 2014 Minutes	Senators Davis and Werk

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Vick

Sen Davis

Sen Mortimer

Sen Nuxoll

Sen Hagedorn

Sen Lakey

Sen Bock

Sen Werk

COMMITTEE SECRETARY

Carol Deis

Room: WW48

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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, February 17, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:31 p.m.

**S 1274** **Relating to Boating - Senator Keough** stated that **S 1274** relates to amending the current statute Idaho Code §67-7016 which defines grossly negligent operation in the Idaho Safe Boating Act and that there was a copy of the court case involving that statute included in the Committee's packet. The purpose of the bill is to update the Idaho Safe Boating Act involving a recent court case where Idaho Code §67-7016 was found void for vagueness and therefore violates the Due Process Clause of the 14th Amendment. There have been two recent incidents of boating accidents in Idaho in which §67-7016 has been used to hold boaters responsible for their actions that resulted in injuries and damages. This bill seeks to clarify the law so that accountability and responsibility can be assigned appropriately. On line 13 the current section of code was repealed due to the language being deemed to be void for vagueness by the magistrate court. In the order granting the motion to dismiss in the case of Stauber v. Idaho and State v Pigge, which had virtually identical language found unconstitutionally vague and the court held that the current statute does not specify nor define any acts, general or specific, covered by its terms – and does not even require that the vehicle be driven or operated in a negligent, careless, or unlawful manner. In granting the motion to dismiss in the Stauber case, the presiding judge stated "as in Pigge, the statute in this case fails to identify any general or specific acts that are prohibited." This legislation will replace the language in the Negligent Boating Statute with that from the Reckless Driving Statute in §49-1401, which was changed after the Pigge case and has since withstood constitutional scrutiny without being overruled. **Senator Keough** stated that the new proposed statute is more specific with what constitutes grossly negligent operation and lists action that can be taken if a violation occurs. **Senator Keough** reviewed the penalties of the proposed changes. Outlining the definition of negligent operation as a lesser offense than grossly negligent and stated that it was a misdemeanor. On page 2, line 4 "negligent operation" is repealed because the new language in the bill proposes to merge into the new section of code both negligent and grossly negligent. In August 2012, a boat operator crashed into a moored sail boat on Lake Ponderay and was charged with grossly negligent operation, three violations of the Idaho Safe Boating Act and misdemeanor child endangerment. The public defender successfully moved to dismiss the negligent operation charge after the same charge was dismissed in another boating accident because the statute was unconstitutionally vague. On July 4th 2013, Stauber, a boat operator on Priest Lake, collided with an anchored cabin cruiser. That case was dismissed because the statute was again found unconstitutionally vague. **Senator Keough** said that she and her cosponsors have been asked to clarify this statute to provide

the tools needed by law enforcement, prosecutors and judges to appropriately hold people accountable for their negligent conduct on Idaho waterways.

**Senator Lakey** inquired concerning the language of §67-7033, which talks about the judge having the ability to remove privileges to operate a boat on the second offense and asked how law enforcement would know they did not have a license. **Senator Keough** responded that she was unaware if there would be a database with boat license information but would find out. **Senator Lakey** asked about §67-7077 and wondered if there was a need for the 100 feet proximity to another boat in order to be considered negligent. **Senator Keough** responded that she decided to leave it in the bill for safety reasons. **Senator Lakey** asked if the proximity applied to grossly negligent. **Senator Keough** answered that it was unknown at the time.

**Senator Hagedorn** inquired into Title 49, Chapter 14 which defines reckless and inattentive driving, and its comparison to Title 67. In the language he noticed that negligent operation and inattentive driving are similar, that they are both misdemeanors. Would you consider making negligent operation an infraction instead of a misdemeanor as there would be more options for law enforcement to issue a citation that did not result in a court date? **Senator Keough** replied that she left it as a misdemeanor because that is currently in code and because the prosecutors she consulted suggested that they might change the penalty of grossly negligent operation to a felony.

**Senator Davis** said he compared the proposed language to §49-1401 where the phrase "any person who drives or is in actual physical control of any vehicle upon a highway" and wondered if there was a reason there was not a specification for actual physical control. **Senator Keough** responded that the focus was more on the specification of language for prosecution.

**Senator Davis** asked if there was an infraction that included loss of life and could law enforcement be able to prosecute for manslaughter. **Senator Davis** asked **Ms. Somoza**, Nampa Prosecuting Attorney for clarification concerning the difference between an infraction and a misdemeanor. **Ms. Somoza** replied that the prosecuting attorney would be unable to have a jury trial for an infraction and that an infraction does not allow for restitution under the statute. A lengthy discussion ensued about the difference between having an infraction versus a misdemeanor as the penalty for negligent operation.

**MOTION:**

**Senator Davis** moved to send **S 1274** to the floor with a do pass recommendation. Seconded by **Senator Bock**. The motion carried by **voice vote**. **Senator Nuxoll** requested that she be recorded as voting **nay**.

**S 1221**

**Relating to the Child Protective Act - Senator Guthrie** said that **S 1221** seeks to amend Idaho Code Sections §§16-1602, 16-1617, 16-1618. Section 16-1602 is in the definition section on page 2, line 39 and includes the addition of "child advocacy center" as a definition and "Idaho Network of Children's Advocacy Centers". The proposed changes to §16-1617 seek to include Child Advocacy Centers as part of the interagency multidisciplinary teams. Those teams include: law enforcement, the Department of Health and Welfare – Child Protection Risk Assessment, prosecuting attorney's office and health professionals. The changes in lines 41 through 44 were to allow the opportunity for the Idaho Network of Children's Advocacy Centers to train team members if the request is made. On page 6, line 16, language was added to allow child advocacy centers to conduct interviews making that language the most important change in the code. **Senator Guthrie** referenced letters of support in the packet the Committee received and stated that there would be testimony. Unfortunately it is sad to say that 1 in 4 children are abused before the age of 18, and advocacy centers provide a child-friendly center where examinations and counseling can take place. The staff's ability to put children at ease helps



prosecutors obtain more information for a better chance at conviction. Child Advocacy Centers have been in place for some time but have not been included in code. There are better opportunities for federal funding; last year, federal dollars paid for the training of over a hundred counselors, case workers, physicians, nurses and law enforcement personnel. There are more resources in the prosecuting process and Child Advocacy Centers allow for a greater amount of witnesses for prosecutors to use in court. This bill requires no state funding.

**Vice Chairman Vick** asked if the Child Advocacy Centers are non-profit organizations. **Senator Guthrie** replied that some were 501 (c) C3s and for the most part non-profit. **Vice Chairman Vick** asked if the centers existed in most areas of the State. **Senator Guthrie** answered that there currently are five centers and one being built.

**Chairman Lodge** asked for a rundown on the funding and asked if the centers were put in statute would they then request state funding. **Senator Guthrie** explained that funding comes from grants from the United Way, the Idaho Council of Domestic Violence and Victims Assistance, Victims of Crime, Act Crime Victims Compensation Fund, and donations from law enforcement and city agencies, as well as the ability to bill for some services through Medicaid and insurance.

**MOTION:**

**Senator Hagedorn** moved to send **S 1221** to the floor with a do pass recommendation. Seconded by **Senator Nuxoll**.

**Senator Mortimer** moved that **S 1221** be referred to the 14th Order for amendment. Seconded by **Senator Lakey**. The substitute motion carried by **voice vote**.

**Senator Mortimer** stated that Section 1617 in which "each county shall" and "the team shall consist of" and "available in the State" should be clarified. **Senator Lakey** also stated that the reference to the State needed to be clarified. **Senator Davis** said that the motion to amend should not be perceived as hostile and that a minimal amount of amendment could be carried out quickly.

**Senator Guthrie** replied that in his understanding the prosecuting attorney shall be responsible for the development of the teams specific to each county. **Senator Davis** stated that the reason the Committee did not feel the need to hear further testimony is because the Committee already agreed and supported the bill.

**Chairman Lodge** responded she agreed with Senator Davis that the Committee supported the bill and thanked those in the audience for attending.

**S 1290**

**Relating to the Juvenile Corrections Act - Senator McKenzie** explained that this bill relates to the jurisdiction of the Juvenile Corrections Act. There are separate juvenile courts for minors and a code section that defines what cases go to juvenile court, which would be the section they would be amending. Section 20-505 provides for jurisdiction and in Subsection 4, the current language said that it does not apply to juvenile violators of beer/wine/alcohol or tobacco laws, except if the juvenile offender is under the age of 18, then the court has discretion to treat them under the Juvenile Corrections Act. This change would provide that, if a violation is a statutory violation (a violation just because the offender is a child) then it would fall under the Juvenile Corrections Act. Under that act other crimes that relate to alcohol or tobacco would be in adult court, which would have the discretion to treat them under the Juvenile Corrections Act. **Senator McKenzie** related cases in which the provision was referenced and outlined a study in which research indicated that transferring juveniles to the criminal court and punishing them as adults has a number of harmful effects for the youth and society. Juvenile courts allow for better results, particularly in the issue of underage drinking and that there were more options for helping the juvenile get back on the right track. Without this change, the juvenile would have an adult criminal record that follows them their entire life. In speaking to a magistrate judge who said that there are too many people who have

a criminal record for minor offenses committed when they were juvenile. **Senator McKenzie** cautioned that the fines are smaller in juvenile court versus being tried in an adult court and therefore the State will be collecting less funds. The idea of collecting fines is not a reason to have jurisdiction in one court or another.

**Michael Henderson**, Legal Counsel for the Courts, explained that passing this bill will be a policy decision and must be informed by practical concerns. Their department became involved because the Idaho Association of Counties asked their department to circulate this issue to Idaho magistrate judges for comment. The judges expressed some concerns. This provision used to say that the "chapter shall not apply to juvenile violators of alcohol and tobacco laws except a juvenile violator under the age of 14 at the time of violation may be treated under the provisions of this chapter." In 2005 H 205 changed that age from 14 to 18. Different counties treated these cases differently. The judges had several concerns, including that the present system was working well, as well as concern over how the issue would be handled in the larger counties? What will be the physical impact in the larger counties; how will they handle the influx of cases? Part of the impact will be a fiscal impact, the loss of dedicated funds which come from collected fines and costs, which should be considered in the implementation of the legislation. He said that it appeared that by excluding those that would be a crime, if committed by an adult, it created an anomalous circumstance as a juvenile could commit an alcohol violation that is not a violation by reason of age. For example, a juvenile who is working at a restaurant and provides alcohol to other minors, which is a misdemeanor no matter what, could create conflict in the sentencing process.

**Vice Chairman Vick** inquired into the loss of revenue **Mr. Henderson** replied that there were hundreds of cases and that, when they looked at Ada County, there were 300 in a fiscal year. **Vice Chairman Vick** asked if that meant then that there were hundreds of juveniles whose lives were being impacted more negatively than they should be, and how would that concern would be addressed if they delayed the change. **Mr. Henderson** replied that they would like to have the ability to have programs in place in order to affect their lives in a positive manner.

**Senator Lakey** said that all the juvenile cases are handled by magistrates, and if there was a reduction in the adult case load and an increase in the juvenile case load, how would it affect the counties that specifically designate juvenile magistrates. **Mr. Henderson** said that there is more intense focus at the juvenile level. **Senator Bock** asked if the statute was changed would there be more cases that resulted in detention. **Mr. Henderson** replied many of the cases that are handled in the adult criminal court result in the imposition of a fine and court costs with no jail time and that there would be a greater likelihood at the juvenile court level to involve detention time in the penalty.

**MOTION:** **Senator Nuxoll** moved to send **S 1290** to the floor with a do pass recommendation. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

**S 1340** **Relating to Civil Actions - Robert L. Aldridge**, Trust and Estate Professionals of Idaho, Inc., stated that Light Portable Battery Operated Devices (AED) are becoming extremely widespread and the existing statute from 1999 does not encompass the modern trend to remove the physician from the original statutory requirement that the physician prescribe or oversee the maintenance and training of the equipment. AEDs are freely available online and the American Red Cross and American Heart Association provide training and maintenance carried out pursuant to manufacturer specifications.

**MOTION:** **Senator Davis** moved to send **S 1340** floor with a do pass recommendation. Seconded by **Vice Chairman Vick**. The motion carried by **voice vote**.

**S 1341**

**Relating to the Idaho Criminal Gang Enforcement Act - Ellie Somoza**, Nampa Prosecuting Attorney. Before Ms. Somoza began her presentation **Senator Davis** asked if there was anyone present that wished to speak in opposition of this legislation. **Chairman Lodge** answered that there was no one on the sign-in sheet that wished to speak in opposition to the legislation.

**Senator Davis** said that he remembered the print hearing presentation on this legislation and at that hearing it was determined that this is a technical correction to the bill language.

**Senator Hagedorn** asked for an explanation on line 35 "complaint or petition" has been added. How is that not information? **Ms. Somoza** answered that information or indictment only applies to adult felonies.

**MOTION:**

**Senator Davis** moved to send **S 1341** to the floor with a do pass recommendation. Seconded by **Senator Bock**. The motion carried by **voice vote**.

**ADJOURNED:**

There being no further business, **Chairman Lodge** adjourned the meeting at 3:02 p.m.

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Senator Lodge

Chair

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Carol Deis  
Secretary

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David Ayotte  
Majority Staff Assistant

**AMENDED AGENDA #1**  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Wednesday, February 19, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS22934</u></a>	Relating to Justice Reinvestment	Senator Lodge, Representative Wills
<a href="#"><u>RS22906</u></a>	Relating to Peace Officers Standards and Training	Senator Goedde
Minutes:	Approval of January 24, 2014 Minutes	Senators Davis and Lakey
Minutes:	Approval of January 27, 2014 Minutes	Senators Mortimer and Lakey
Minutes:	Approval of January 29, 2014 Minutes	Senators Nuxoll and Bock
Minutes:	Approval of January 31, 2014 Minutes	Senators Hagedorn and Nuxoll
Minutes:	Approval of February 3, 2014 Minutes	Senators Davis and Werk

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Vick

Sen Davis

Sen Mortimer

Sen Nuxoll

Sen Hagedorn

Sen Lakey

Sen Bock

Sen Werk

COMMITTEE SECRETARY

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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, February 19, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:31 p.m. and asked the secretary to call the roll.

**RS 22906** **Relating to Peace Officers Standards and Training - Senator Goedde** stated this legislation deals with law enforcement education. There is an academy in North Idaho and two other vocational technical law enforcement entities, one at Idaho State and the other at the College of Southern Idaho.

The Peace Officer Standards and Training (POST) Meridian has been providing a number of services to the North Idaho Academy, but those services have been curtailed. Included in the legislation is a redefining of fine money and how it should be allocated to take some of the burden off the local property taxpayers by splitting the fine money that goes to POST in Meridian and allocating the split funds between the current two academies. The College of Southern Idaho plans on establishing an academy program in their school; hence they would be eligible for some of these funds.

**Chairman Lodge** asked what is the difference between the academies and POST. **Senator Goedde** replied the curriculum is the same the difference is the academies are short duration, North Idaho College is 14 weeks and POST in Meridian is 10 weeks. The vocational technical programs are two semester programs. The same course work is taught in all these institutions. **Chairman Lodge** asked if an individual took a law enforcement major at Boise State University and then hired by the Idaho State Police would they then go to POST for further training? **Senator Goedde** answered that if you graduate from North Idaho Academy and pass the test that POST regulates then the individual is certified; it would be as if they went to the POST Meridian. The advantage to the local law enforcement agencies is that an individual who lives elsewhere in the State who might not be able to go to Meridian for 10 weeks could take the POST course at the North Idaho Academy.

**MOTION:** **Vice Chairman Vick** moved to print **RS 22906**. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**PASSING OF THE GAVEL:** Chairman Lodge passed the gavel back to Vice Chairman Vick.

**Relating to Justice Reinvestment - Chairman Lodge** explained that in January 2013 Representative Wills and Senator Lodge set some goals. In March 2013 Idaho was given the opportunity to apply for a grant to fund the study of its criminal justice system. The State applied to the Council of State Governments (CSG) and was accepted. For the last 10 months an expert team from CSG has been studying Idaho's Criminal Justice System. The team went through over 570,000 documents and spent hundreds of hours studying all aspects of the State's criminal justice system. The common goal was to find an Idaho solution to increase the public safety and control correction costs. CSG worked on data analysis and engaged a working group of over 30 individuals and an interim committee throughout the summer and fall to find solutions to the criminal justice problems.

The CSG team found that Idaho had the third lowest crime rate in the nation, but the State's recidivism was larger and higher than the national average. More than half of the individuals released from prison were reincarcerated within three years after they left the prison. Idaho's prison population is the second fastest growing in the country and in the next five years it will increase by 16 percent at a cost of \$288 million. What are the drivers of the growth in the prison system. 1) to many offenders are failing on probation and parole and are being sent back to prison; 2) non-violent offenders in Idaho spend almost twice as much time in prison as the national average; and 3) the state has no system in place to track the outcomes in quality of the recidivism reduction strategies.

How will the legislation improve the present justice system? This legislation before you intends to strengthen probation and parole supervision with a well-trained workforce that will hold offenders accountable. The plan is to have these individuals come out of the correctional system as productive, accountable citizens who hold themselves responsible. They support their families, they repay their victims and are accountable to their communities. Structuring parole so that prison space is prioritized for violent offenders and more resources are directed into community treatment to lower the recidivism costs. At present, individuals are released from the prison system and they have no support in the community and find out that life was easier in prison then being out on the streets. Many ministries have come forth, as we started the process of Justice Reinvestment, asking to become more actively involved in the community. Part of the reinvestment process will require that programs be evaluated to make sure that taxpayer dollars are being used wisely. At present the State has many programs but no way of evaluating them.

If this legislation is applied effectively it will slow down Idaho's prison population growth and save \$288 million over the next five years because the State will not have to build another prison. Each bed in the prison costs \$165,000. Over the next 5 years \$33 million of the savings will be reinvested in probation and parole officer training, community treatment and quality assurance measures. These improvements have the potential to reduce recidivism by 15 percent over the next 5 years. The implementation of this policy will depend on how all the various agencies work together. Board of Corrections, Probation and Parole, Idaho Department of Corrections and the courts. All of these agencies have had input into the crafting of this legislation and consensus has been reached to redraft our justice system.

**Senator Mortimer** moved to print **RS 22934**. Seconded by **Senator Bock**. The motion carried by **voice vote**.

**PASSING OF  
THE GAVEL:**

Vice Chairman Vick passed the gavel back to Chairman Lodge.

**Senator Davis** asked Holly Koole, representing the Idaho Prosecuting Attorneys Association (IPAA), if **RS 22934** is printed and the Senate bill comes back before the Committee will the prosecuting attorneys be supportive of the legislation. **Ms. Koole** responded that their Association would be supportive of the legislation that includes the changes that their association made to the bill last week. **Senator Davis** asked are you aware of prosecutors around the State that might have a conflict with the changes that the Association has been able to negotiate on behalf of prosecutors statewide. **Ms. Koole** replied that their Association has 44 elected officials and over 200 deputies. IPAA, who represents seven judicial districts, is supportive of the legislation.

**Chairman Lodge** stated that this is probably one of the few times that all three branches of government have worked together to craft legislation that will help save and change lives. Over 9,000 children have a parent in the prison system in Idaho. By the time they are 18 years old 10 percent of those children will be in the juvenile system. The chances of them going to prison themselves are 5 times higher. There are 10 million children in the United States that have had a parent in jail and 1.5 million that have a parent in jail now. 65 percent of the men in prison and 85 percent of the women in prison have a child or two. To save these children's lives all states need to make changes in how we help these individuals become accountable productive citizens.

**MOTION:**

**Senator Lakey** moved to approve the Minutes of January 24, 2014. The motion was seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**Senator Mortimer** moved to approve the Minutes of January 27, 2014. The motion was seconded by **Senator Lakey**. The motion carried by **voice vote**.

**Senator Nuxoll** moved to approve the Minutes of January 29, 2014. The motion was seconded by **Senator Bock**. The motion carried by **voice vote**.

**Senator Hagedorn** moved to approve the Minutes of January 31, 2014. The motion was seconded by **Senator Nuxoll**. The motion carried by **voice vote**.

**Senator Werk** moved to approve the Minutes of February 3, 2014. The motion was seconded by **Senator Bock**. The motion carried by **voice vote**.

**ADJOURNED:**

There being no further business, **Chairman Lodge** adjourned the meeting at 1:50 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

**AMENDED AGENDA #1**  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Friday, February 21, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<b>Idaho Judicial Council Appointment</b>	Honorable Thomas J. Ryan of Caldwell, Idaho was appointed to the Idaho Judicial Council to serve a term commencing July 1, 2013 and expiring June 30, 2019.	
<b>Gubernatorial Appointment</b>	Kathy Simpson of Boise, Idaho was appointed to the Idaho Judicial Council to serve a term commencing July 1, 2013 and expiring June 30, 2019.	
<b>Gubernatorial Appointment</b>	Dolly Ouita Bedal of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing January 1, 2014 and expiring January 1, 2017.	
<b>Gubernatorial Appointment</b>	Paula K. Garay of Meridian, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing January 1, 2014 and expiring January 1, 2017.	
<b>Gubernatorial Appointment</b>	Kimberly Simmons of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing January 1, 2014 and expiring January 1, 2017.	
<a href="#"><u>RS22959</u></a>	Relating to Genetic Testing	Unanimous consent request from the Health & Welfare Committee
<a href="#"><u>RS22900</u></a>	Relating to Physicians	Unanimous consent request from the Health & Welfare Committee
<a href="#"><u>RS22956</u></a>	Relating to Inmate Agricultural Labor	Senator Lodge
<a href="#"><u>S 1351</u></a>	Battery of Healthcare Workers	Emily McClure, Idaho Medical Association

COMMITTEE MEMBERS

Chairman Lodge  
Vice Chairman Vick  
Sen Davis  
Sen Mortimer  
Sen Nuxoll

Sen Hagedorn  
Sen Lakey  
Sen Bock  
Sen Werk

COMMITTEE SECRETARY

Carol Deis  
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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, February 21, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Nuxoll, Hagedorn, Lakey and Bock

**ABSENT/ EXCUSED:** Senators Mortimer and Werk

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:31 p.m.

**IDAHO JUDICIAL COUNCIL APPOINTMENT:** **Thomas J. Ryan** of Caldwell, Idaho was appointed to the Idaho Judicial Council to serve a term commencing July 1, 2013 and expiring June 30, 2019. **Judge Ryan** stated that he was a district judge of in the Third District and has been a judge for 18 years. He served as magistrate judge in Owyhee County for 12 years before becoming the district judge in Caldwell. He is an Idaho native, born in Caldwell, graduated Nampa High School and University of Idaho Law School and a member of the Idaho Bar for the past 30 years. In his capacity on the Council he has selected candidates to be referred to the Governor for positions in district courts along with some disciplinary complaints made against judges. He is excited that the State is on the cusp of becoming a state where 100 percent of the judges will go through an evaluation process.

**Senator Hagedorn** asked what do you see as the State's greatest challenge in the judiciary branch over the next four years. **Judge Ryan** answered that he believes it will be judges going from a paper system to a paperless system. **Senator Davis** asked about **Judge Ryan's** philosophy concerning the confidentiality process. **Judge Ryan** replied the issue of confidentiality is very important because you are dealing with personnel matters when you address complaints and disciplinary action that might be taken against judges. **Senator Davis** asked what types of complaints come before the Judicial Council. **Judge Ryan** explained most of the complaints seem to deal with demeanor issues in the courtroom. Complainants feel they are not being listened to by the judges when they appear before them. He has witnessed this behavior from the judges and believes it is needless. Because of this behavior he counsels young judges that there will be many times that they will personally feel angry about what is taking place in the courtroom. When they leave the bench, at the end of the day they should search their minds to figure out what they could have done differently to curb the anger and avoid future outbursts in the courtroom. **Senator Davis** asked what are some of the challenges he sees in the selection process and how can the Legislature help with the process. **Judge Ryan** responded it would be the challenge of recruiting sufficient candidates for the open positions of district judges. There are recruitment issues that must be worked on. **Senator Davis** asked what about the recruitment of women as judges in the State. **Judge Ryan** stated he believed that they needed to attract more women into the judiciary. In the Third District three out of the seven district judges are women and they are very competent colleagues whom he likes to bounce ideas off of as they go about their business day in the judiciary. **Senator Lakey** asked could you comment on the effectiveness of the speciality courts. **Judge Ryan** said he presided over the

drug court in Canyon County for a five year period. He believes in these specialty courts and the work they do even though these courts don't have 100 percent results. One of the successful cases out of this court is an individual that he sees every morning whose case was processed through his drug court and it is a pleasure to see him employed and a good citizen at this point in his life. These courts deal primarily with offenders who generally only have substance abuse issues and have committed crimes in the process of supporting their habit. The court sentences them to intensive treatment and probation which keeps them out of the jails and prisons, spending only \$4,000 per person over 18 month period.

**GUBERNATORIAL APPOINTMENT:** **Kathy Simpson** of Boise, Idaho was appointed to the Idaho Judicial Council to serve a term commencing July 1, 2013 and expiring June 30, 2019. **Kathy Simpson** stated she grew up in Blackfoot, Idaho on a small family farm and that is where she learned the value of hard work and responsibility. Her early years were filled with many chores and participation in 4H, along with working long hours during harvest. She graduated from Utah State University and her professional career began in business in the banking industry. For fifteen years she held positions of consumer real estate, commercial loan officer, marketing director and branch manager. Memorable experiences in this field were mentoring young women and men who came into the workforce. She retired after 20 years with the Idaho National Laboratory where she managed public affairs and communication. **Senator Davis** asked if she has been a part of the selection process of judges and is there any room for improvement. **Kathy Simpson** stated she has been in the interview process for five different judicial appointments. She was impressed with the many facets to the Council's process and evaluation of these candidates. The candidates fill out a 17 page application, bar survey, and evaluation of their character. It is the composite of all of these elements that make a very viable process and she is very impressed with its thoroughness.

**GUBERNATORIAL APPOINTMENT:** **Dolly Ouita Bedal** of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing January 1, 2014 and expiring January 1, 2017. **Ms. Bedal** said in 1993 she was on a Boise County steering committee which implemented a program call "I Can"; which was an Idaho City accountability diversion program, along with implementing a pilot program for a drug court and was a certified substance abuse counselor. She owned a corporation that provided substance abuse services to court ordered and privately referred adolescent and adult clientele. Assisting these clients to develop the best practices to become productive and gainful members of society. From 1993 to 2011 she held positions working with adolescent, adult families; juvenile and adult probation and parole; local, county and state law enforcement agencies; Idaho Department of Corrections Victims; Offenders of Domestic Violence; and Sexual Addictions. She is a native of Idaho who is concerned about the safety of the public and the accountability of sex offenders. This is a reappointment, and she would be honored to be reappointed to the Board. **Senator Davis** voiced that Ms. Bedal has been on the Board through a significant transition, and asked what is her impression of the new rules and policies that have just been adopted, are they an improvement? **Ms. Bedal** answered the Board has worked diligently to look at various sex offender management programs from other states along with what has worked and not worked. The public has more information than in the past and she believes that the Board has done an incredible job updating their program. **Senator Davis** asked are there other things that the Legislature should be doing that they have left undone. **Ms. Bedal** stated that the Board has addressed every certain concern at this particular time.

**GUBERNATORIAL APPOINTMENT:** **Paula K. Garay** of Meridian, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing January 1, 2014 and expiring January 1, 2017. **Ms. Garay** stated she was raised in Nissa, Oregon on a farm. She graduated from Boise State University in Psychology and acquired her master's degree in Counseling Psychology. Currently she holds the position of Executive Director for a adolescent sexual behavior problem residential program. She represents the cultural diversity portion of the Board and is heavily tied to this arena. Since 2004 she has been a clinical member of the Association for the Treatment of Sexual Abusers.

**Senator Davis** asked is there anything lacking in the changes that have been made to the sex management program and how can the Legislature help the Board be more effective. **Ms. Garay** answered she is proud and confident of the progress the Board has made in their efforts to update their rules and policies. The Board sought collaboration with other states language and practices in making these changes and now Idaho is seen as being in the forefront of sex offender management. At present she does not see an area of the program that is lacking. Any gaps in the rules and regulations have been answered and she believes there are no matters to be addressed. **Senator Davis** asked have there been any professional conflicts arising in their work and if so, how are they being managed. **Ms. Garay** has not seen any conflicts. The next endeavor to be accomplished is an evaluation of treatment provider standards. **Senator Hagerdorn** asked what are the greatest challenges the Board might face in the next few years and how might they approach those challenges. **Ms. Garay** explained that the Board was formed to adopt procedures and put checks and balances in place. Idaho has rural pockets where individual treatment providers have been allowed to hang out their shingle and profess to be experts in the treatment of sexual abuse and that is not always the case. The standards and the regulations to those standards will allow the Board to regulate some of these treatment providers.

**GUBERNATORIAL APPOINTMENT:** **Kimberly Simmons** of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing January 1, 2014 and expiring January 1, 2017. **Ms. Simmons** stated that currently she serves as a Deputy Ada County Public Defender, handling all stages of felony cases after they are bound over to district court, including probation violations. She has a bachelor's from Truman State University in Psychology, and a law degree from Tulane Law School and passed both the Texas and Idaho bar examinations. As a member of the Board she has actively participated in the creation of standards related to sex offender management. In the performance of her duties as a defender she has the relevant experience defending clients charged with sex offenses. She makes an extra effort to stay apprised of the research relating to evaluation and treatment of sex offenders. Her role as a member of the Board has been to provide the defense perspective on the policies and procedures that the Board is considering. **Senator Davis** noted that Ms. Simmons has had absences at Board meetings. She has sent a proxy to represent her at these meetings, but that person would not be subject to Senate confirmation for casting the votes. **Ms. Simmons** explained that the colleague she has sent from her office as a proxy for the Board meeting has never participated in a vote and her colleague would not participate in the vote. **Kathy Baird**, Sex Offender Management Board, stated that under the Boards by-laws if a member of the Board is unable to attend they may send a proxy. Voting would be done on a certification of a provider and a proxy would be prohibited from voting. **Senator Hagerdorn** asked what is the effectiveness of the Sex Offender Registry and is there is anything that should be changed. **Ms. Simmons** said the Board is currently working on the Registry because it is not as effective as it should be. Many other states employ a tiered system of registration where convicted sex offenders are not necessarily required to register for their entire lives. Collaborating with other states they noticed that

where sex offenders complete treatment and have no other offenses they allow that individual to be taken off the Registry. Her opinion is taking these individuals off the Registry is more effective, especially if they are low risk. Evidence shows that low risk offenders given harsher punishments are more likely to recidivate than ones given their lives back.

**RS 22959**      **Relating to Genetic Testing**, with a letter of unanimous consent request from the Health and Welfare Committee to print **RS 22959**.

**RS 22900**      **Relating to Physicians**, with a letter of unanimous consent request from the Health and Welfare Committee to print **RS 22900**.

**MOTION:**      **Senator Davis** moved to print **RS 22959** and **RS 22900**. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

**PASSING OF THE GAVEL:**      Chairman Lodge passed the gavel to Vice Chairman Vick.

**RS 22956**      **Relating to Inmate Agricultural Labor - Senator Lodge** stated the idea for this legislation was brought to her last fall. There was not enough labor to pick the fruit in the Sunny Slope area. In the past they have had individuals from the Canyon County Jail come out and pick the fruit, but there were not enough prisoners in the jail last fall to meet this need. **Chairman Lodge** called the Idaho Department of Corrections (IDOC) and they responded that they had some inmates that would like to come out and work, but there was no legislation in place that would allow the inmates to do the work. It would have taken four to six months to get a federal waiver to allow the inmates to work. This bill will allow inmate labor the opportunity to work for a private employer in the production, harvesting and processing of perishable Idaho agricultural food products. The IDOC will establish a fund where the wages will be placed and a process to take out deductions. In the Criminal Justice Reinvestment legislation there is a provision that 20 percent of the wages earned must go toward paying off the inmates restitution, a portion will offset their transportation and security, a portion placed into a fund for when they reenter the community and a portion placed in their commissary fund.

**Senator Hagedorn** asked for clarification on line 15, which states use of inmate labor will not result in the displacement of employed workers within the local region in which the agricultural work is being performed. How would this be determined? **Senator Lodge** explained that a fruit ranch already has people that they hire and they will not be able to discharge these people in order to employ the inmates. This legislation deals with perishable food that must be picked within a certain amount of time. The fruit ranches already have crews, but they did not have enough labor to pick the fruit last season.

**MOTION:**      **Senator Bock** moved to print **RS 22956**. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

**PASSING OF GAVEL:**      Vice Chairman Vick passed the gavel back to Chairman Lodge.

**S 1351**      **Battery of Healthcare Workers - Emily McClure**, representing the Idaho Medical Association, stated that battery against healthcare workers has become a major problem in Idaho, particularly in emergency rooms and by those who are seeking drugs. Healthcare workers are in need of added protection for three reasons: 1) they have a higher rate of violent incidence than other professionals.

A healthcare worker is three times more likely to be victim of a violent crime in the workplace than any other private sector professional. 2) They are required by federal law to treat individuals. Often individuals come in violent to an emergency room and treating them requires that they be in close physical proximity; 3) They are the keepers of narcotics and other drugs. Doctors, nurse practitioners and others are often targeted outside a medical environment by those who are seeking drugs. In rural communities individuals looking for drugs recognize the healthcare provider who can write prescriptions stopping them on the street and demanding drugs. This legislation will make it a felony to batter healthcare workers on the job or because of their profession. Approximately 50 percent of all non-fatal injuries to workers from violent acts occur in a healthcare setting. Patient violence is the greatest threat to emergency department personnel and costs associated with these incidents.

The goal of this legislation is not to fill prisons but to provide healthcare workers, courts and prosecutors with a tool to deter this violence. This will be particularly meaningful in the case of repeat offenders who are simply not being held accountable by existing law.

**Senator Bock** asked Ms. McClure if they were aware of any opposition to the bill. **Ms. McClure** answered no, we are not aware of any opposition. **Senator Nuxoll** said this legislation will make it a felony to batter healthcare workers; was this formerly a misdemeanor? **Ms. McClure** replied the only law on the books at this point to charge a battery against a healthcare worker would be under §18-903. Battery against an EMT or other protected classes of people is handled in varying degrees felonies or misdemeanors charged under §18-915. **Senator Lakey** said there is another section of Idaho Code that says there are options available to the judges, that the prison term shall not exceed three years. The judges still have the opportunity to do a combination of a fine and prison. **Ms. McClure** explained that under Idaho Code §19-2601 a court is given many options for sentencing such as commuting a sentence, suspending a sentence, withhold judgement, probation, etc. Similarly under Idaho Code §18-112 (a), the court may choose to also impose a fine up to \$50,000. **Senator Bock** asked since a battery is already a criminal offense, why is there a need for a separate statute which would apply to healthcare workers. **Ms. McClure** responded that the statute that is in place has not deterred these actions. There continue to be major incidents of violence against healthcare workers at an increased rate over the incidence of other private sector professionals, and this bill will be a stronger deterrent for these crimes.

**Vice Chairman Vick** asked what has happened under the current statute when a healthcare worker has reported the assault to law enforcement. **Ms. McClure** replied that they are told by some that healthcare workers are not reporting these incidents because it happens so frequently and that during circumstances when they did report the assault they are not being responded to or taken seriously. **Senator Davis** said all his questions are on language such as policy, need, importance, the ability to give to the healthcare worker something that might otherwise settle things down and will provide some abrupt calmness. The bill seems to adopt by reference the definition of batteries, refers to the code section, and whom it impacts shall be subject to imprisonment. Section 18-915 (c) states that it is a crime, it speaks in terms of the punishment. **Ms. McClure** explained they could have written the language in the bill stating that the crime shall be a felony subject to imprisonment not to exceed three years. Instead they chose to refer to the code number, which infers by definition that the offense would be a felony. Much discussion ensued between **Senator Davis** and **Ms. McClure** concerning the construction of the language in the bill until **Senator Davis** was satisfied with its intent.

**Julie Hoerner**, Director of Emergency and Trauma Services at Kootenai Health in Coeur d Alene, representing Kootenai Health Nurse Leaders of Idaho and the Emergency Nurses Association, stated that she has been a nurse for 28 years, most of the time has been spent working in the emergency nursing area in several capacities. She has worked in both urban and community hospitals and possesses a bachelor of science in nursing and a master's in leadership and management. She has personally been a victim of workplace violence but is testifying today for her staff. Her staff come to work everyday to care for people and are putting themselves at risk physically and emotionally. They have had an emergency department physician punched in the kidney by a patient who was unhappy with the course of his treatment. A visitor entered their special care nursery and interfered with medical care being provided for his baby. He lifted an employee and threw her to the ground. A patient threatened to kill one of their emergency department physicians, if he did not prescribe narcotics. An emergency department nurse and respiratory therapist were both kicked by a man who was high on methamphetamine and as a result the nurse had to have shoulder surgery and missed nine months of work; the therapist had to have knee surgery and missed over eight months of work. There are costs associated with these actions in lost work time, absenteeism, and moral, and healthcare workers are leaving the profession. There are economic impacts to the hospitals because of the injuries to their workers, plus they need to hire more staff to fill in the vacant positions while workers heal from their injuries. Enacting this legislation is one part of a larger movement to reduce violence against healthcare workers.

The incident of the nurse and respiratory therapist who were assaulted by the patient high on methamphetamine, this was not this patient's first offense. The patient was charged with a misdemeanor and 180 days in jail, but 170 days of his jail sentence were suspended and he only served 10 days in jail. The two caregivers each served over 270 days of pain, surgery, rehabilitation, and loss of time with families and work. **Senator Hagedorn** questioned if this law were to pass how would it be implemented in a practical manner to work for the safety of the healthcare workers. **Ms. Hoerner** stated at the moment of the battery incident this legislation will not make much difference, but it will be a deterrent as the law is applied. **Senator Vick** stated that these offenses might not be a law problem but an enforcement problem. **Ms. Hoerner** responded that many of her staff are suffering from the trauma of being harmed emotionally and physically. **Senator Bock** stated that you have the ability to charge an offense as a felony and then the negotiation of the sentencing proceeds from that point. There is not much negotiation from misdemeanor down so there are very good reasons to have these actions sentenced as felonies.

**Ellen Bencken**, representing the Idaho Nursing Associations; **Clement Abbondandolo**, Director of Security for St. Luke's Hospital; **Margaret Henbest**, Nurse Leaders of Idaho; and **Toni Lawson**, Idaho Hospital Association, support the bill and testified that they believe it will add safety and change the culture of tolerance of these offenses for healthcare providers. It sends a clear message across our state and communities that this behavior will not be tolerated, especially in rural communities.

**Vice Chairman Vick** stated he would not be supporting this legislation because he believes that many of the patients are coming into the healthcare facility under distress and great stress. He believes these batteries are a law enforcement issue and these authorities are not taking these incidents seriously. **Senator Vick** said he will not support this legislation.

**Senator Hagedorn** stated he will support the legislation because he believes in deterrents for people who batter healthcare providers. **Senator Nuxoll** stated she will not support this legislation because she believes it will not be a deterrent. A patient under duress will not be thinking whether their actions might be a felony. Some of the testimony presented explained that this legislation will only be part of the solution and other factors of stricter reporting and safer environment would also be part of the solution. She believes these measures should be tried before legislation.

**MOTION:** **Senator Davis** moved to send **S 1351** to the floor with a do pass recommendation. Seconded by **Senator Bock**. The motion carried by **voice vote**. **Vice Chairman Vick and Senator Nuxoll** requested that they be recorded as voting **nay**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 3:25 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

**AMENDED AGENDA #2**  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Monday, February 24, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<b>Committee Vote</b>	Thomas J. Ryan of Caldwell, Idaho was appointed to the Idaho Judicial Council to serve a term commencing July 1, 2013 and expiring June 30, 2019.	
<b>Vote On Gubernatorial Appointment</b>	Kathy Simpson of Boise, Idaho was appointed to the Idaho Judicial Council to serve a term commencing July 1, 2013 and expiring June 30, 2019.	
<b>Vote On Gubernatorial Appointment</b>	Dolly Ouita Bedal of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing January 1, 2014 and expiring January 1, 2017.	
<b>Vote On Gubernatorial Appointment</b>	Paula K. Garay of Meridian, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing January 1, 2014 and expiring January 1, 2017.	
<b>Vote On Gubernatorial Appointment</b>	Kimberly Simmons of Boise, Idaho was appointed to the Sexual Offender Management Board to serve a term commencing January 1, 2014 and expiring January 1, 2017.	
<a href="#"><u>S 1250</u></a>	Relating to Protected Persons	Robert L. Aldridge, Trust & Estate Professionals of Idaho, Inc.
<a href="#"><u>S 1357</u></a>	Relating Justice Reinvestment	Senator Lodge, Representative Wills, Marc Pelka, Policy Recommendation, Program Director

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge	Sen Hagedorn
Vice Chairman Vick	Sen Lakey
Sen Davis	Sen Bock
Sen Mortimer	Sen Werk
Sen Nuxoll	

COMMITTEE SECRETARY

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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, February 24, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/  
EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:32 p.m.

**CONFIRMATION VOTE:** The appointment of **Thomas J. Ryan** to the Idaho Judicial Council.

**MOTION:** **Senator Lakey** moved to recommend that the Senate approve the appointment of Thomas J. Ryan to the Idaho Judicial Council. Seconded by **Vice Chairman Vick**. The motion carried by **voice vote**.

**VOTE ON GUBERNATORIAL APPOINTMENT:** **Senator Davis** moved to send the gubernatorial appointment of Kathy Simpson to the Idaho Judicial Council to the floor with the recommendation that it be confirmed by the Senate. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**VOTE ON GUBERNATORIAL APPOINTMENT:** **Senator Davis** moved to send the gubernatorial appointment of Dolly Ouita Bedal to the Sexual Offender Management Board to the floor with the recommendation that it be confirmed by the Senate. Seconded by **Vice Chairman Vick**. The motion carried by **voice vote**.

**VOTE ON GUBERNATORIAL APPOINTMENT:** **Senator Lakey** moved to send the gubernatorial appointment of Paula K. Garay to the Sexual Offender Management Board to the floor with the recommendation that it be confirmed by the Senate. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**VOTE ON GUBERNATORIAL APPOINTMENT:** **Senator Nuxoll** moved to send the gubernatorial appointment of Kimberly Simmons to the Sexual Offender Management Board to the floor with the recommendation that it be confirmed by the Senate. Seconded by **Senator Davis**. The motion carried by **voice vote**.

**S 1250** **Relating to Protected Persons - Robert L. Aldridge**, Trust and Estate Professionals of Idaho, Inc. stated in the initial presentation of this legislation there were some questions that came up dealing with the language in the bill. **Senator Davis** addressed the Committee reminding them that this was the bill that they heard on February 3, 2014 and a motion was not made. At that time, we requested that the bill have some additional research and when that was completed to bring it before the Committee. This bill, as written, is probably not what should be recommended to pass. Some of the issues with the language are due to testamentary capacity which is unique to our State. **Senator Werk** responded that he was hesitant to move legislation forward under the Amending Order if the changes needed would be substantial. **Mr. Aldridge** explained that they have outstanding cases right now which are raising these issues. With the Roger and Connelly decisions in place there are active cases that need

clarification which this legislation was crafted to address. **Senator Davis** asked for assistance from **Senator Bock** and **Senator Lakey** in crafting the language for a quick solution so this legislation can move forward.

**MOTION:** **Senator Davis** moved to hold the bill to a time certain. Seconded by **Senator Werk**. The motion carried by **voice vote**.

**S 1357**

**Relating to Justice Reinvestment - Representative Wills** stated a year ago discussions were started to explore how we can change the way we do business with the prison population in the State. The prison system seemed to be working from some aspects, but the Legislature was seeing enormous bills. The rising costs of the prison system challenged them to look at what was working and not working within that system. A working group was formed out of the three branches of the state government; which met with every agency involved in the correction system to move forward with needed changes. This is a success story which will be improved on over the next five years. Some of the changes will be an improvement in processes and a reduction in funds spent on the correction system. This bill before you today is a complete compilation of the three branches investing in better outcomes for Idaho.

**Marc Pelka**, Council of State Governments (CSG), stated that he would focus his remarks on three areas: 1) Modified impact estimates for the justice reinvestment policy framework; 2) The public safety improvements justice reinvestment will deliver to Idaho's system; and 3) What successful implementation of justice reinvestment legislation involves. From the beginning of this project in June, CSG's key focus has been on the intersection between data analysis, research and the frontline perspective of people who work in the criminal justice system (see attachment 1).

Following the Committee's February 12, 2014 public hearing, modifications were made to the original bill **S 1331** containing Idaho's justice reinvestment framework. These changes were agreed upon after a variety of meetings with criminal justice system stakeholders to address specific concerns with the bill language. **S 1357** is a product of the agreement reached. New language for Policy 2 (D), appearing in **S 1357**, Section 12, requires the following: (1) That the Idaho Department of Correction (IDOC) promulgate rules to prepare individuals in prison for parole; (2) That the Commission on Pardons and Paroles establish guidelines for reducing the average percent of time in prison beyond the fixed term; (3) That the agencies submit annual reports to the Legislature on the percentage of property and drug offenders released by 150 percent of their fixed term. The optimal point for the criminal justice stakeholders and policy makers leading it. When they collaborated with their research team to model the impact of the revised policy framework there were three lines for the prison population projection (see Figure 1 in attachment 1). Depending on the speed and degree of implementation, the justice reinvestment policy framework could avert between \$221 and \$288 million in corrections costs by 2019.

There are three challenges to Idaho's criminal justice system that are contributing to increases in Idaho's prison population, spending on corrections, and recidivism.

First challenge: Idaho has a revolving door of recidivism. Corrective measures to address the problem:

- Identify how to improve offender behavior and outcomes in the system.
- Better trained probation and parole officer workforce.
- More probation and parole officers time and attention to the highest risk offenders based on risk assessment.

- Increase substance use treatment in the community which will increase the confidence of the prosecutors, judges and parole commission that the resources exist to manage offender behavior in the community.
- Introduction of the administrative sanction capability which allows probation and parole officers to respond in a swift manner to violations of the conditions of supervision. This will tie a response sanction to the violation that is committed to help change offender behavior to avoid the significant costs of revocation to prison and the crime and dysfunction that occur as a result.

Second challenge: Idaho has an inefficient use of prison space. Corrective measures to address the problem:

- Length of stay. People convicted of property and drug offenses spend almost twice as much time in prison than the national average.
- Idaho has the use of the Rider Program which can produce enormous reduction in recidivism if the right people are placed in the program. The variation occurs on whether they are low, medium or high risk people coming into that prison system. The Rider Program framework would help to prioritize the highest risk offenders who would benefit the most from this programming.
- The length of stay that people spend following the violation term in prison.
- The legislation charges the Department of Correction and Parole Commission to work together to manage the length of time that people are serving beyond fixed term prison following a conviction of property and drug offenses.

Third challenge: There is insufficient oversight to track Idaho's recidivism-reduction efforts. Corrective measures to address the problem:

- Idaho stands out nationally for the range of offender risk and need assessments conducted throughout its criminal justice system.
- The State is investing resources in community-based substance use treatment, data and IT capacity.
- Risk assessments used to sort offenders into categories based on risk of recidivism would be validated every five years to ensure that they are being used consistently.

Finally, continued oversight and tracking of progress toward implementing these policies. States that create these working groups tend to see coordination across state branches and levels of government to maximize the success of this reinvestment.

**Senator Davis** asked for clarification on page 14, paragraph 2. **Marc Pelka** responded that the language in that paragraph provides the ability for any party of the Board of Corrections to submit to the court a request to modify the terms and conditions of probation along with termination. This all ties into policy 1 (c) in the report to prioritize supervision resources based on the individual's risk of recidivism. **Senator Davis** asked if there is similar language as it relates to parole. **Marc Pelka** replied page 21, line 45, paragraph 2, relates to the ability to submit a request to the Parole Commission for termination of parole supervision. **Senator Davis** asked will there be due process required that will also compel the Parole Commission to hold some form of a dispositional proceeding. **Marc Pelka** replied that in most states the process is constructed to create a waiver option which parole violators will accept and begin serving the determinate area of confinement.

**Sheriff Gary Raney** - stated within the system the vast majority of the people will get out of prison and the State must look at the recidivism rate and practices to make the communities safer. The community is not willing to fund the continued expansion of jails without some proof that there is value in the process.

**Holly Koole** - representing Idaho Prosecuting Attorneys Association (IPAA), stated because IPAA's inclusion in how the bill was drafted their Association is in support of the bill.

**Patti Tobias** - Administrative Director of Courts, said each step of the way the judiciary has contributed to the justice reinvestment process. All three branches of Idaho government are supportive of exploring a justice reinvestment and resource allocation approach to improve public safety, reduce recidivism, and reduce spending on corrections. Early on, the district judges identified the following priorities for the study: 1) Maintain the judges flexibility and discretion in crafting an appropriate sentence for each offender. 2) Strengthen probation supervision by addressing caseloads and training, and using evidence-based practices. 3) Increase community based treatment for offenders for substance use disorders. 4) Increase drug testing funds available to provide rigorous testing. 5) Ensure timely and accurate pre-sentence information and assessments.

**Judge Wood** explained that felony sentencing is at the core of what district judges do. Sentencing is extremely serious in every respect; for society; the individual defendant and their families; and the victim.

There are four long established and recognized goals and objectives of a sentence: 1) Protection of society is the primary goal. 2) Deterrence of which there are two types: general to the community and specific to the individual defendant. 3) Retribution or what is known in the law as punishment for the sake of punishment. 4) Rehabilitation. In fashioning a particular sentence, the sentencing judge is to take into account the nature of the offense, the circumstances of the offense, and the background, attitude and character of the offender, all in light of those four goals and objectives.

**S 1357** Does not change the following:

- The Unified Sentencing Act, Idaho Code §19-2513. Every felony sentence is made up of two distinct parts, the sum of which is called the unified sentence: 1) Fixed or determinate portion during this part an offender is not eligible to be paroled. 2) Indeterminate portion, during which a defendant is parole eligible.
- Unified Sentencing Statute, Idaho Code §19-2521. The length of sentence and the track the offender will take. The other part of §19-2521 is a series of factors, which if the court finds, in the exercise of discretion primarily exist, weigh in favor of a period of imprisonment.
- Idaho Code §19-2601 Commute the sentence, grant withheld judgment, suspend the sentence, or place the defendant in retained jurisdiction program.

**S 1357** only changes Idaho Code §19-2601, Subsection 5, which provides that if the court elects to place a defendant on supervised probation, it must require the defendant to sign an agreement of supervision with the Idaho Department of Corrections. Finally, **S 1357** does not interfere with the discretion of district judges.

**Senator Werk** said the implementation of **S 1357** will take some oversight to be successful. Do the courts have a process to ensure that implementation is robust and that areas of improvement will be identified as the process proceeds? **Ms. Tobias** explained the judiciary is committed to this implementation process and there are a number of opportunities for this oversight as part of the legislation. Senator Lodge will be introducing a resolution to provide another year of interim committee oversight for the implementation of the legislation. The ongoing criminal justice commission will also provide their expertise. A number of the provisions of the statute provide for reports to the Legislature and the timing of the implementation of the bill was specifically structured to allow reporting directly to the Legislature at the beginning of the 2015 session.

**Director Brent Reinke** - Idaho Department of Corrections (IDOC), pledged the commitment of his Department to accomplishing the timelines that are laid out before them in the legislation (see attachment 2).

**Michael Kane** - representing the Idaho Sheriffs Association, stated that the Idaho Sheriffs Association is in support of **S 1357**. The Association's residual of concerns have been addressed for the question of whether or not a parolee is entitled to a hearing before his parole is revoked. The language has been included on page 21, line 41, stipulating the explicit rights of the parolee. Mandatory parole has been completely removed from the legislation. As each individual in prison comes up at the end of their fixed time they are entitled to be reviewed by the Parole Commission in section 9, page 16. This language replaced mandatory parole and the bill has now injected back into it the ability for the Parole Commission to look at the offender on an individual basis and apply the factors including risk assessment.

**Representative Wills** stated in closing he has not seen many bills that have had this type of an endorsement across a broad spectrum of agencies unilaterally and no agency abstained from giving their input as the legislation was formed. What we have today is something that is rare in the State of Idaho, which are substantial cost savings and more collaborative work then has been seen in the history of Idaho for a long time.

**MOTION:**

**Senator Bock** moved to send **S 1357** to the floor with a do pass recommendation. Seconded by **Senator Werk**. The motion carried by **voice vote**.

**ADJOURNED:**

There being no further business, **Chairman Lodge** adjourned the meeting at 3:06 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

**AMENDED AGENDA #1**  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Wednesday, February 26, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS22962</u></a>	Relating to Dairy Products	Unanimous consent request from the Agricultural Committee
<a href="#"><u>RS22940</u></a>	Relating to Education	Unanimous consent request from the Education Committee
<a href="#"><u>RS22999</u></a>	Relating to the Correctional Industries Act	Senator Lodge
<a href="#"><u>RS22948</u></a>	Relating to Suspension of Judgment and Sentence	Michael Henderson, Legal Counsel for the Courts
<a href="#"><u>RS22995</u></a>	Relating to Water Quality	Unanimous consent request from the Resources & Environment
<a href="#"><u>H 422</u></a>	Relating to Uniform Controlled Substances	Captain Charlie Spencer, Operations
<a href="#"><u>S 1353</u></a>	Relating to the Juvenile Corrections Act	Judge Varin
<b>Presentation</b>	Successes of the Idaho State Police	Colonel Powell
<b>Presentation</b>	Understanding Idaho Trial Lawyers Association	Barbara Jorden, Idaho Trial Lawyers
Minutes:	Approval of February 5, 2014 Minutes	Vice Chairman Vick and Senator Hagedorn
	Approval of February 7, 2014 Minutes	Senators Davis and Nuxoll
	Approval of February 10, 2014 Minutes	Senators Mortimer and Bock

COMMITTEE MEMBERS

Chairman Lodge	Sen Hagedorn
Vice Chairman Vick	Sen Lakey
Sen Davis	Sen Bock
Sen Mortimer	Sen Werk
Sen Nuxoll	

COMMITTEE SECRETARY

Carol Deis  
Room: WW48  
Phone: 332-1317  
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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, February 26, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the Committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:30 p.m. and requested the Committee Secretary take a silent roll.

**RS 22962** **Relating to Dairy Products**, a unanimous consent request received from the Agricultural Committee to print **RS 22962**.

**RS 22940** **Relating to Education**, a unanimous consent request received from the Education Committee to print **RS 22940**.

**RS 22995** **Relating to Water Quality**, a unanimous consent request from the Resources and Environment Committee to print **RS 22995**.

**MOTION:** **Senator Werk** moved to print **RS 22962, RS 22940 and RS 22995**. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

**PASS THE GAVEL:** Chairman Lodge passed the gavel to Vice Chairman Vick.

**RS 22999** **Relating to the Correctional Industries Act:** **Chairman Lodge** stated that this is the same RS that had been before the Committee previously for agricultural inmate labor. There are some changes to be made in how the Department of Corrections sets up some of the different areas. The former RS would have been fine except that there would have been some amendments done to it next year, so she had sent it up to be re-printed so that everything would be in alignment with what will be done with it in future years. Other than that the RS is the very same, which will give the Department of Corrections the ability to have inmates work for private employers in the production, harvesting and processing of agricultural food products.

**MOTION:** **Senator Bock** moved to print **RS 22999**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**PASS THE GAVEL:** Vice Chairman Vick passed the gavel back to Chairman Lodge.

**RS 22948** **Relating to Suspension of Judgement and Sentence:** **Michael Henderson**, Legal Council for the Idaho Supreme Court, said this RS has been recommended by the Idaho Supreme Court and they are requesting that it be printed. This bill would amend Idaho Code that is currently in place. Last year there was an amendment to the statute, and this legislation represents less significant but still important amendments. This section allows a court to set aside a conviction or guilty plea, or in the case of a felony conviction, to reduce it to a misdemeanor in certain circumstances.

The amendments for this RS mainly deal with Subsection 1 of the statute, looking at those individuals who have been put on probation and never violated the terms of their probation. This amendment allows for the court, where a defendant has received a suspended sentence or withheld judgement, to set aside the plea of guilty or conviction (or reduce it to a misdemeanor if it's a felony). In order to obtain this relief the defendant must show: first that the court did not find that the defendant had violated the terms or conditions of probation during any of the period of probation; second, that there's no longer cause for continuing the period of probation; and third, that granting the relief would be compatible with the public interest. The granting of such relief is always up to the court's discretion.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

**MOTION:**

**Senator Mortimer** moved to print **RS 22948**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**H 422**

**Relating to Uniform Controlled Substances: Captain Charlie Spencer**, stated that the legislation amends and clarifies Idaho Code relating to the number of persons required, from the Idaho State Police (ISP), to witness the destruction of drugs. This portion of the Code was in place in 1971 and provided for the oversight of the destruction of drugs which falls under the direction of the Director of the ISP. In 1971, Forensic Services fell under the direction of the Idaho Department of Health and Welfare (H&W). At that time, H&W, the Board of Pharmacy and the Idaho Department of Law Enforcement (DLE) were required to witness the destruction of drugs. In 1988, Forensic Services was transferred and fell under the direction of the DLE. The law still required the Board of Pharmacy, Forensics and DLE (now ISP) to witness the destruction of drugs.

**Captain Spencer** noted that with the two bodies being governed by the ISP, it's an unnecessary duplication of efforts to continue to have both as witnesses, and the ISP is requesting that Forensic Services no longer be required to provide representation. Excluding forensics will not adversely impact the integrity of the drug destruction process, and this legislation has gained the support of Forensic Services and the Board of Pharmacy.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 2).

**Senator Mortimer** wanted to know if there is much interaction between the ISP and the Board of Pharmacy. **Captain Spencer** responded that the ISP communicates with the Board of Pharmacy on a regular basis, especially when it comes to the destruction of drugs. **Senator Mortimer** voiced the concern that a close relationship between the two could be viewed as too close and something illegal could result from it, so by taking the third party out of all of this, there may be issues such as illegal actions. **Captain Spencer** answered that drugs are seized throughout the year and there is a whole process that they are required to go through before the drugs are destroyed, so the removal of the third party does not impact the process or its integrity.

**Senator Werk** wanted to be clear that with these substances there is a complete chain of custody in place, with full documentation for who handled the drugs (when, why, etc.) before they are destroyed. **Captain Spencer** stated that was absolutely correct, and there are witnesses throughout the chain of custody from start to finish to prevent any problems along the way.



**MOTION:** **Senator Hagedorn** moved to send **H 422** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**. Senator Hagedorn will carry **H 422** to the floor.

**S 1353** **Relating to the Juvenile Corrections Act: Judge Jack Varin**, retired Magistrate Judge, stated that he was given an exciting opportunity as he retired from the courts. He had been approached by a national organization to become a consultant for them to help improve the juvenile justice system in Idaho. The organization is the National Campaign to Reform State Juvenile Justice Systems and is funded by several large foundations.

**Judge Varin** went on to say that in working with a group of stakeholders, they've been able to see a trend in the consequences of a juvenile court record, which prevents those youthful offenders from obtaining jobs, going to college, and joining the military. There have been several areas identified to help address this concern: strengthening Idaho's diversion program, addressing expungement, and sealing court records. These are long-term projects that hopefully can be worked on in the coming year with the idea to be able to prepare legislation, if required, for the next session.

This year they identified the need to clarify the court's authority to dismiss an informal adjustment when granted by a judge and to provide the court with authority to dismiss a juvenile offender's case upon completion of a juvenile drug court, mental health court or other types of corrective court situations.

**Judge Varin** stated that he has worked with another judge, a prosecutor and a public defender from Ada County in drafting this legislation. It has been given to the judges and prosecutors association, and they have addressed some of the comments received.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 3).

**Senator Lakey** had a question on the section in the legislation regarding discharge following completion of one of the problem-solving courts and wanted to know how many times a juvenile could go to one of these types of courts, or was there a limit to the number of times they could ask for a dismissal. **Judge Varin** said that it would not be any different from the adult side of the world, and it would be a discretionary opportunity as long as the person showed a willingness and ability to complete the program as outlined.

**Senator Davis** wanted to know if page 2, Section 2, lines 26-38, which totaled 121 words, was meant to be one sentence. **Judge Varin** responded that yes it is, and it mirrors the adult statute.

**Vice Chairman Vick** had a follow-up to Senator Lakey's question; for a situation where there is someone who has had their charges dismissed, their records expunged, does the judge still have access to that information to know that there's been a prior history if the juvenile re-offends? **Judge Varin** explained that if the case is dismissed it's still part of the public record, but when a case is expunged it cannot be brought back since it basically is erased. The only way the case could be brought back is through a court-ordered process.

**MOTION:** **Senator Bock** moved to send **S 1353** to the floor with a **do pass** recommendation. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**. Senator Werk will carry **S 1353** to the floor.

**PRESENTATION: Successes of the Idaho State Police (ISP): Colonel Ralph W. Powell** began the presentation by giving a brief overview of the ISP and noted that they had celebrated their 75th Anniversary on February 20th in the Capitol Rotunda. Colonel Powell mentioned that the ISP headquarters is in Meridian, and the State is divided into six districts that have patrol and investigation operations in each. He then went on to detail for the Committee the different ISP programs which work to support their mission of "providing public safety across the state of Idaho through law enforcement excellence".

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 4).

**DISCUSSION: Senator Davis** in good fun, wanted to know with Idaho Falls being mentioned so many times throughout the presentation, does that mean they are part of the problem or part of the solution. **Colonel Powell** asked if he could defer to Captain Spencer to provide that exact information later. **Senator Davis**, more seriously, thanked Colonel Powell and the others in attendance for their service, especially in the work they do around the Capitol during the Legislative Session. **Colonel Powell** thanked Senator Davis for his kind words.

**Senator Hagedorn** also wanted to thank the ISP for the help locally and throughout the State. He was curious as to how the ISP handles drugs, specifically marijuana traveling through Idaho to and from states where the sale of the drug is now legal. **Colonel Powell** answered that it is a problem. He emphasized that the ISP has noticed a definite correlation between those bordering states, where medicinal and or recreational use is now legal, and the trafficking of marijuana in Idaho.

**Senator Hagedorn** commented that during the presentation, it seemed as though there were a number of different databases for the various ISP programs. He wanted to know if these were all backed up outside the Treasure Valley in case there is a security breach so that the information can still be accessed. **Colonel Powell** stated that was an excellent point and some systems are already in place, and others are in the process of being worked on to ensure the information is being securely backed up.

**Chairman Lodge** was curious as to the cost to train one of the officers involved in the ISP's K9 program. **Colonel Powell** said he would defer that question to **Captain Spencer** who stated that to totally train and equip their K9 officers, it costs them \$10,000 per officer, which includes an 8-week training course for the officer, safeguards for the dog in the vehicle, food, water and other items needed.

**Chairman Lodge** asked the Committee members if any of them had been able to see K9 Bingo in action. She then requested that perhaps they can see him in the Committee before the Legislative Session ends. **Colonel Powell** responded that it would certainly be possible for Bingo to make an appearance before the Committee. He also wanted to make it clear that the ISP has been able to make use of various funds and grants to make the K9 program possible.

**Senator Nuxoll** wanted to know if the cost included the purchase of the dog itself. **Colonel Powell** responded that no, it just covers the training. **Senator Nuxoll** asked to know the cost of the dog. **Colonel Powell** answered that the cost of the dog is roughly around \$2,000.

**PRESENTATION: Understanding Idaho Trial Lawyers Association: Barbara Jorden**, Executive Director, Idaho Trial Lawyers Association (ITLA), stated that this was the first time the ITLA had asked to make a presentation before the Committee about who they are and what they do. The ITLA and its members are a presence during the Legislative Session since they are called upon to testify before various committees. She stated that the ITLA is a statewide association of lawyers of various types (mostly plaintiff's lawyers, but others as well).

**Ms. Jorden** noted that the ITLA is a non-partisan group, but the membership does mirror that of state political trends, with mostly republicans, but they do not support one party over another. One of the main purposes of the ITLA is to provide support and services for its membership. They offer helps that especially benefit lawyers in smaller communities and allow for the sharing of ideas among members. The ITLA also provides opportunities for continued education for its membership who are required to have so much continuing legal education. There are also seminars held to update the attorneys on any changes that may have taken place with the most recent Legislative Session.

What may not be as well known is that the ITLA is very focused on giving back to the community and encourages their members to get involved and serve, whether it's through pro-bono efforts or working with other groups in need. **Ms. Jorden** provided the Committee with a handout and spoke about the Street Law Clinic which began in 2013. This program has been modeled after one that Utah has implemented, and even though it's only been in operation for 13 months, they have served over 225 clients. The Street Law Clinic was started for those who don't understand the law, who just have some questions, or can't afford a lawyer. They are able to meet with law students who have been trained in how to help them and answer their questions. There are things that have been requested in the clinic that they are not allowed or able to help with, but for the most part they have been able to direct its users to the next step that needs to be taken.

The Street Law Clinic (open the 2nd Monday of each month) has been so successful that a second group has been started to focus on family law issues; The Family Law Clinic is now open the 4th Monday of each month. In January and February of this year, the University of Idaho College of Law Boise Program offered a tax conflict service, and the ITLA had helped them in finding a place to practice.

**Ms. Jorden** stated that the Committee is probably most aware of the ITLA and its membership's involvement in their efforts to help make good laws for the State. She reminded the Committee that the ITLA serves a niche and fits into that niche through the 7th Amendment of the U.S. Constitution, as well as code written into the State's Constitution that allows for the same right. She stated that she hopes that ITLA can be seen as a reference and resource to the legislators if they have questions. Even though they are serious people doing serious work, they also like to have fun, and she gave several examples of fun events put on for the membership. She then referenced the ITLA's website (ITLA.org) and noted some of the helpful features.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 5).

**DISCUSSION:** **Senator Werk** commented that he was excited to hear about the clinics being offered by the ITLA to help ordinary citizens with some of their legal needs and questions. He requested that the links for the information be emailed to the Committee members so they could then share them with their constituents. **Ms. Jorden** responded she would be happy to do that.

**Senator Davis** noted that he understands that Ms. Jorden needs to be sensitive to privilege, but wanted to know if the ITLA had considered tabulating over time the various types of issues that are being addressed at and through the clinics to see if it is actually helping the citizens. He also wanted to correct the fact that the ITLA has not only been before committees to lobby against legislation but also for it as well.

**Senator Hagedorn** wanted to know if there was some reason why the ITLA has not picked Senator Davis to "roast" yet. **Ms. Jorden** stated she wasn't sure if the ITLA would be able to convince him to participate in the event, but they would certainly consider the idea.

**MINUTES  
APPROVAL:**

**Vice Chairman Vick** moved to approve the February 5, 2014 Minutes as written. **Senator Bock** seconded the motion. The motion carried by **voice vote**.

**MINUTES  
APPROVAL:**

**Senator Davis** moved to approve the February 7, 2014 Minutes as written. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**MINUTES  
APPROVAL:**

**Senator Bock** moved to approve the February 10, 2014 Minutes as written. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED**

There being no further business before the Committee, **Chairman Lodge** adjourned the meeting at 2:46 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

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Linda Harrison  
Assistant Secretary

**AMENDED AGENDA #2**  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Monday, March 03, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
PRESENTATION: ISP Canine Program		Trooper Otto
<a href="#"><u>RS22993C1</u></a>	Relating to Uniform Controlled Substances	Unanimous consent request from Health & Welfare Committee
<a href="#"><u>RS22920</u></a>	Relating to the Idaho Uniform Business Organization Code (Note: Only the SOP will be in your packet. The bill is over 300 pages.)	Unanimous consent request to print. Senator Davis
<a href="#"><u>S1250</u></a>	Relating to Protected Persons	Robert L. Aldridge, Trust Estate Professionals of Idaho
<a href="#"><u>S 1354</u></a>	Relating to Bad Faith Assertions of Patent Infringement	Mike Reynoldson, Government Affairs Manager, Micron
<a href="#"><u>S 1375</u></a>	Relating to Suspension of Judgment	Michael Henderson, Legal Counsel for the Courts
<a href="#"><u>H 456</u></a>	Relating to County Jails	Michael Kane, Sheriffs Association
	Approval of February 12, 2014 Minutes	Vice Chairman Vick and Senator Hagedorn
	Approval of February 14, 2014 Minutes	Senators Mortimer and Bock

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge	Sen Hagedorn
Vice Chairman Vick	Sen Lakey
Sen Davis	Sen Bock
Sen Mortimer	Sen Werk
Sen Nuxoll	

COMMITTEE SECRETARY

Carol Deis  
Room: WW48  
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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, March 03, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:30 p.m. and asked the secretary to call the roll.

**PRESENTATION:** **ISP K9 Program - Major Steve Richardson**, Idaho State Police, stated that at present they just have the one dog stationed in the Jerome Office but will be receiving three additional dogs. One dog will go to Coeur D'Alene, the second dog will be placed in Meridian and the third dog will be stationed in Idaho Falls. The ISP K9 Program is strictly narcotics detection dogs and they are not dual purpose. **Senator Nuxoll** asked do the dogs ever miss finding the narcotics? **Major Richardson** answered that it is not uncommon that a dog will indicate on an area or vehicle where drugs have been recently. **Major Richardson** showed a Channel 2 segment to the Committee on their Canine Program.

**Trooper Otto** stated that Idaho has a huge amount of trafficking with methamphetamine, heroin, cocaine and marijuana going over Idaho's interstates and Idaho only has one dog on duty at this point. Bingo is assigned to Trooper Otto 24/7, he comes home with him, has a kennel and is not a pet. Trooper Otto and Bingo train on a weekly basis with the Twin Falls City Police Department K9 Program. Bingo is a passive indication dog; indication alert means a non-trained response. When Trooper Otto runs around a car or an area there will be a change of behavior in Bingo. When Bingo is doing his own searching he may have a deep nasal breathing or a fixation on a certain area, that response is an alert. Alerts are easy to defend in court because it is a non-trained response. The dogs are trained in Utah with their handlers for two months, ten hours a day, four days a week and trained on nothing but narcotics area searches - cars, rooms, packages, and luggage. Then the dog must go through a certification process in Utah, and when the dog is brought to Idaho it must be certified in Idaho. **Trooper Otto** demonstrated Bingo's abilities to locate narcotics by planting some scented cotton balls in the Committee chamber.

**RS 22993C1** **Relating to Uniform Controlled Substances**, with a letter of unanimous consent request from the Health and Welfare Committee to print the RS.

**MOTION:** **Senator Lakey** moved to print **RS 22993C1**. Seconded by **Vice Chairman Vick**. The motion carried by **voice vote**.

**RS 22920**

**Relating to the Idaho Uniform Business Organization Code** request from Senator Davis to print the RS. **Senator Davis** stated **RS 22920** has 317 pages so the Committee packets have only the outline of the Uniform Business Organization Code (see attachment 1.) The red lettering represents the work of the Uniform Law Conference and the blue is not the work of the Uniform Law Conference instead represents the appropriate law section that has reviewed the material. This legislation relates to unincorporated business organizations and adopts the Harmonized Uniform Business Organizations Code created by the Uniform Law Commission. The purpose of the legislation is to harmonize Idaho's unincorporated entity statutes so they can be integrated into a single code of entity laws. In addition to the uniform law, at the request of the Corporate Section of the Idaho State Bar this legislation includes the laws relating to general business corporations and nonprofit corporations in order to create a single comprehensive state business code.

**MOTION:**

**Senator Bock** moved to print **RS 22920**. Seconded by **Senator Werk**. The motion carried by **voice vote**.

**S 1250**

**Relating to Protected Persons - Robert L. Aldridge**, Trust and Estate Professionals of Idaho, stated that the Committee has before them the **RS 22513A1** amendment and the original bill. The original **S 1250** Section 1, regarding testamentary capacity, is unchanged; and defines capacity. Section 2 has been deleted in **S 1250** because of the new method that will be used the section will remain unchanged. A new Section 2 in the RS amendment amends existing 15-5 through 4; which is findings and words of appointment. **Senator Davis** asked for clarification on **S 1250**. If you strike everything excepts Sections 1 and 3 the amended RS is the rest of the bill. **Mr. Aldridge** answered that is correct. **Mr. Aldridge** stated in Section 2 (d), lines 31 to 34 parallels what is existing in the conservatorship code. Section 3 remains the same. Section 4 has been changed to include new language in § 32-109. The net effect of these changes are to provide that just because an individual has had a guardian or conservator appointed for them does not automatically mean that the individual has lost capacity. The capacity issue would be a separate determination that would be made in individual cases.

**MOTION:**

**Senator Davis** moved that **S 1250** be referred to the 14th Order for amendment. Seconded by **Senator Werk**. The motion carried by **voice vote**.

**S 1354**

**Relating to Bad Faith Assertions of Patent Infringement - Mike Reynoldson**, Government Affairs Manager, Micron, stated patents are the lifeblood of Micron Technology. Their company spends \$1.5 billion per year on research and development and is a top ten patent holder in the world. **S 1354** deals with deceptive demand letters to businesses large and small, containing vague allegations of patent infringement and demanding payment from those businesses. **Mr. Reynoldson** passed out an example of a bad faith demand letter (see attachment 2). The entities that send these letters setup shell corporations and then one will shut down and another corporation will start up. While this letter does not have all of the characteristics that are outlined in this bill as to what bad faith assertion activity might look like it represents a view of the characteristic of the demand letters.

There has been further development in this legislation concerning Pharmaceutical Research and Manufacturers of America (PhRMA) (see attachment 3) a letter from the law firm of Risch and Pisca. **RS22892A1** amendments will be added to **S 1354**.

**Amy Lombardo** - Parsons, Bailey and Latimer, stated patent trolling is not defined in the legislation because it is a behavior, not necessarily the definition of the entity. This legislation focuses on stopping the bad faith assertions of patent infringement. The common theme of the letters sent out by these bad faith assertions threaten litigation or further action if demands are not met immediately by paying an exorbitant licensing fee. The common scenarios are payment of \$1,000 per employee if your business utilized the technology to scan documents to e-mail because of your connection to a network. Any entity that might have a website that has an on-line shopping cart function. In the banking industry requests are made that they owe money because of the use of the technology for ATM transactions.

**Ms. Lombardo** explained the specifics of **S 1354** to the Committee. **Senator Davis** stated on page 4 of the bill there is a three year limitation on action. How does this time track with the limitation of actions on the patent holders? Why wouldn't you have a limitation of action in the bill that mirrors there right to make a claim for a breach. If they had knowledge and they make a claim and they have a right to assert a claim for up to six years why wouldn't you want to give a corresponding time shield to the target business. **Mike Meyers** - patent counsel for Micron Technology, answered the limitation in this bill would be three years rather than the action for a patent infringement. There does not need to be a link between the time limit on a patent owners right to assert infringement because what triggers the violation of this act is the sending of the demand letter. If the target of the letter wants to take action within three years that will give the target plenty of time, and if four or five years after the first bad faith letters is sent the patent owner takes another action then the time period would be started again.

**MOTION:**

**Senator Davis** moved that **S 1354** be referred to the 14th Order for amendment. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

**S 1375**

**Relating to Suspension of Judgment - Michael Henderson**, Legal Counsel for the Courts, stated this bill will clarify some of the provisions in Idaho Code § 19-2604(1), which provides that upon making certain showings, a person who has received a suspended sentence or withheld judgement may have the plea of guilty or conviction set aside, or have a felony conviction reduced to misdemeanor.

First, the list of persons who would be eligible for relief would include all defendants who were not actually required to serve a sentence in the custody of the Board of Correction and all those misdemeanor defendants who were not required to serve a term in the county jail. Second, Idaho courts have often set aside or reduced the convictions of persons who applied for relief following completion of their probation term. But the literal language of this section seems to indicate that relief can be granted only while the defendant is still on probation, since the defendant must convince the court "that there is no longer cause for continuing the period of probation." This bill would make clear that persons who have successfully completed a period of probation can apply for relief. Third, the provision that relief can be granted only "if it be compatible with the public interest" has been interpreted in various ways. The bill would provide that relief can be granted if the court finds good cause for granting it, the same standard that is used to guide a court's exercise of discretion in many other settings. Finally, the bill provides that a violation of the terms of an agreement of supervision with the Board of Correction would not preclude the granting of relief. **Senator Hagedorn** said that good cause was mentioned a few times in the presentation then you referred to a good cause standard: is that defined somewhere or is it implied? **Mr. Henderson** answered it is a standard that is very general and very broad that the court uses to apply in a variety of circumstances. It is not to be inclusive of any factors that relate to the particular persons that may be affected. If you are speaking of a criminal case that would mean society as a whole which could be affected by this.



**MOTION:** **Senator Davis** moved to send **S 1375** to the floor with a do pass recommendation. Seconded by **Senator Werk**. The motion carried by **voice vote**.

**H 456** **Relating to County Jails - Michael Kane**, representing the Sheriffs Association asked that **H 456** referred to the 14th Order. The Sheriffs Association has been working with leadership in the House, Senate and JFAC and have collectively recommended that it would be reasonable to place a \$45 a day rate rather than \$50. This bill is based upon the daily rate that is paid, by the State, for state prisoners to be housed in county jails. Currently the rate is \$40 per day and there is an agreement between the Department of Correction and the sheriffs to pay \$2.50 per day extra for medical services. This rate has not changed since the year 2000 but in the meantime there has been a 35 percent cumulative inflation. In today's dollars it takes \$54 to buy what was purchasable in 2000. The sheriffs and the counties believe it is appropriate to adjust the rate accordingly.

There are two kinds of State inmates that are held in county jails. One group is either on parole or is being transferred and being held for a small period of time. At any given time there are between 200 to 250 state inmates that are held in county jails under these circumstances. In your packet (see attachment 4) is approximate Idaho jail costs per day; how much it costs a county to house one prisoner. The second group of prisoners in the jails are long term prisoners. The Department of Correction has had the sheriffs hold 400 to 600 prisoners in county jails in lieu of building another prison facility to house them. The prisoners benefit by being in State, the counties benefit by having the extra money to help upgrade their jails and the Department benefits by not having to send prisoners out of State. **Senator Werk** asked are the prisoners supposed to be getting services and programming that is very specific for the inmates. **Mr. Kane** responded that the certified jails where the second group of prisoners are housed have rules, regulations and programs that the jails must provide based upon national standards. **Senator Nuxoll** asked why would the counties want to take these prisoners if they lose money. **Mr. Kane** answered the jails have no choice for the first 250 prisoners because they will be housed in the county jails for any given time for all different reasons. There are jails that are willing to take more prisoners because, as an example, they are building a new jail and need extra money, etc. The jails are not losing money under the circumstances because they have agreed specifically to take prisoners in and they have to hire staff, contract for food, clothing, and medical services. When the prisoners are released and the beds are empty they do not want to lay staff off and break contracts so they take the state prisoners in and fill the beds.

**MOTION:** **Vice Chairman Vick** moved that **H 456** be referred to the 14th Order for amendment. Seconded by **Senator Nuxoll**. The motion carried by **voice vote**.

**MOTION:** **Vice Chairman Vick** moved to approve the Minutes of February 12, 2014. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 3:24 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

**AMENDED AGENDA #1**  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Wednesday, March 05, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
Gubernatorial Appointment	Raymond "David" Moore of Blackfoot, Idaho was appointed to the Commission on Pardons and Parole to serve a term commencing February 19, 2014 and expiring January 1, 2017.	
<a href="#">H 447</a>	Relating to Protection of Persons Under Disability	Judge Michael Dennard
<a href="#">H 446</a>	Relating to Divorce Actions	Judge Michael Dennard
<a href="#">HCR 40</a>	Appoint Committee to Study Public Defense Reform	Representative Bolz
<a href="#">H 457</a>	Relating to Safety Restraint Evidence	Michael Kane, Property Casualty Insurers Association
<a href="#">S 1374</a> <a href="#">RS23085</a>	Relating to the Correctional Industries Act Justice Reinvestment Oversight Committee Approval of February 14, 2014 Minutes	Senator Lodge Senator Lodge Senators Mortimer & Bock

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Vick

Sen Davis

Sen Mortimer

Sen Nuxoll

Sen Hagedorn

Sen Lakey

Sen Bock

Sen Werk

COMMITTEE SECRETARY

Carol Deis

Room: WW48

Phone: 332-1317

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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, March 05, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Vice Chairman Vick** called the meeting to order at 1:31 p.m. and asked the secretary to take a silent roll call.

**GUBERNATORIAL APPOINTMENT:** **Vice Chairman Vick** introduced Raymond "David" Moore, the Governor's appointment to the Commission on Pardons and Parole to serve a term commencing February 19, 2014 and expiring January 1, 2017. **Mr. Moore** began his introduction by giving a brief overview of his education and experience. He indicated that he had attended Idaho State University and received both his B.S. and M.S. degrees in education. He spent several years teaching at various locations. He was employed in law enforcement for 36 years and served 16 years as Chief of Police in Blackfoot, Idaho. His education and experience ultimately led him to assume a special mission for the United States Department of Energy in Almaty and Aktau, Kazakhstan. Mr. Moore was assigned to work with the Kazakhstan military personnel training them to secure, protect and safeguard massive amounts of weapons grade material. In 1997 he was offered a position as the Chief of Police for the City of Blackfoot, Idaho. He served there for 16 years until his retirement. This position allowed him to become acquainted and involved with many people statewide in various areas of interest. He was the sponsor of the "video voyeurism" law. His most satisfying work was with former representative Debbie Field when they changed the statute of limitations for reporting and prosecuting childhood sexual abuse.

Mr. Moore has had the following Gubernatorial Appointments. Under Governor Kempthorne he was appointed to the Idaho Law Enforcement Telecommunications Board, served 14 years; appointed to the Governors Coordinating Council for Families and Children, served 2002-2006; appointed to the Idaho Emergency Communications Commission in 2004, served 2004-2012; appointed to the Idaho Kroc Initiative Task Force in 2005. Under Governor Otter he was appointed to the Idaho Peace Officer Standards and Training Council in 2008 and served until he retired. Mr. Moore is grateful for the opportunity to serve on the Idaho Pardons and Parole Commission and feels his education and experience qualify him for this position.

**Vice Chairman Vick** asked for questions. **Senator Davis** thanked Mr. Moore for his willingness to serve on the Idaho Pardons and Parole Commission. **Senator Davis** asked if Mr. Moore had had a chance to look at the legislation proposed by the Justice Reinvestment Committee. **Mr. Moore** indicated that he had met with the Justice Reinvestment Committee and with other police chiefs to review early drafts of the legislation. He said the police chiefs gave suggestions at that time and some of their recommendations had been included in the current legislation. **Mr. Moore** said that he had discussed with the Director what the impacts would be with the Commission. **Senator Davis** indicated that Mr. Moore has been in a leadership role for a very long time. This position would require him to serve as part of a team, and he wondered if Mr. Moore could work in that type of role. **Mr. Moore** said that he had to learn to use cooperation to succeed in his position as chief of police so he didn't see that as being a problem. **Senator Davis** asked Mr. Moore to connect the dots between his degrees in education and his work in criminal justice. **Mr. Moore** said that early in his career he was injured. When he returned to college in 1983 he got his BS in vocational education with expertise in law enforcement training. His MS degree is in corporate training management. He felt that it was a good combination. **Senator Bock** said that one of the problem areas has been the extent to which people get sent back to prison. He asked for thoughts as to how the Commission could help to fulfill the objectives of the Justice Reinvestment Act. **Mr. Moore** said there is going to have to be more emphasis on the parole side of the program getting the monitoring and help they need from the community. **Senator Hagedorn** thanked Mr. Moore and his family for their sacrifice. **Senator Hagedorn** asked what will be your main focus as a member of the Commission. **Mr. Moore** believes his main focus will be to get input from the staff who are involved with these offenders on a day to day basis such as the Department of Corrections and the Parole Commission. **Vice Chairman Vick** thanked Mr. Moore for his participation and indicated that they would vote on his appointment Friday.

**H 447**

**Vice Chairman Vick** asked Judge Michael Dennard to introduce himself. He is a Senior Judge and Senior Manager of Court Services for Children and Families at the Administrative Office of the Court. **Judge Dennard** said the Idaho Supreme Court's Guardianship and Conservatorship Committee recommends statutory amendments to improve the monitoring of guardianships and conservatorships to better protect minors, incapacitated adults, and persons with disabilities. Idaho Code includes several detailed provisions regarding the content and form of reports to be filed with the court by guardians and reports, inventories, and accountings to be filed by conservators. It is the view of the judges, practitioners and other concerned individuals on the Guardianship and Conservatorship Committee, that modifications of these requirements will more readily reflect the information that is needed to ensure the protection of those persons whose health, welfare, and assets are at risk by allowing the Idaho Supreme Court to specify the form and content of these filings in rules. This bill simplifies provisions for filings in the statutes and amends the statutes to provide that reports, accountings, and inventories are to be made under oath or affirmation and shall comply with the Idaho Supreme Court rules. The position of court visitor is defined in Idaho Code § 15-5-308. In guardianship and conservatorship cases, the visitor has the responsibility to investigate and report to the court on all of the critical aspects of a guardianship or conservatorship, including the nature of the incapacity, the needs of the individual, the appropriateness of the guardian or conservator whose appointment is sought, whether a full or limited guardianship or conservatorship should be ordered, and other important information. As a continuing effort to improve the monitoring of guardianships and conservatorships to better protect minors, incapacitated adults, and persons with disabilities, the court may use court personnel to provide court visitor services through the Guardianship and Conservatorship Project Fund,

established by Idaho Code § 31-3210(G). This bill amends § 15-5, Idaho Code 314, to provide that any money recovered from the ward's estate for visitor services provided by court personnel will be deposited into the Guardianship and Conservatorship Project Fund, Idaho Code § 31-3201(G).

**Senator Bock** questioned why there should be a change made to let the courts have more flexibility as to how to structure these changes. **Judge Dennard** replied that they have been given the responsibility to actively monitor cases. Those people who are involved with providing information and identifying problematic areas are the best ones to identify the red flags, and they need the flexibility to figure out how to acquire that information. The flexibility that I mention is that as the committee goes forward in identifying changes, and in their experience in monitoring their procedures, they will develop ideas about what might be more appropriate. It is easier to process and put that in a rule rather than constantly proposing it to them in a statute. **Senator Bock** suggested that Judge Dennard give some examples of the behavior they are referring to. **Judge Dennard** said that some of the red flags are very large expenses being paid to a conservator of a very small estate. He mentioned some abuses described by a professional conservator from Phoenix that included stealing, overcharging the estates, and an elderly person in a nursing home who is being charged an expense for a home. The Chief Justices focus is to monitor professional conservator's practices and protect the people of Idaho. **Senator Davis** commented that he felt that having a requirement to report to the court periodically and in the form determined by the Court will solve a lot of the misconduct.

**Vice Chairman Vick** mentioned that he is in the process of applying for guardianship of their disabled daughter. He asked if Judge Dennard could explain what the annual report would look like. **Judge Dennard** replied that they have developed a standardized form which goes into the details of the well-being of the person in the guardianship. It focuses mostly on what you are doing to promote the best interest of the person under your control. There will be reminders sent that the time for filing is either due or past due. If the guardian has moved or had an address change, a "party locator" will be assigned to find a current address to resend the reminders. **Senator Hagedorn** asked what was the periodicity for guidance of conservatorships for those reports. **Judge Dennard** said that it was still 90 days. That rule has not been changed. It must be at least done annually. A program to determine which cases need more or less monitoring is being devised so that the judge can increase the reporting time if he sees a necessity.

**MOTION:**

**Senator Bock** moved to send **H 447** to the floor with a do pass recommendation. Seconded by **Senator Davis**. **Vice Chairman Vick** stated pursuant to rules of the Senate 39 (H), of the Idaho State Legislature, he has a conflict but still wishes to vote on **H 447**. The motion carried by **voice vote**.

**PASSING OF THE  
GAVEL:**

**Vice Chairman Vick** passed the gavel to Chairman Lodge.

This bill amends Idaho Code § 32-717(D) by adding a subsection which would give the court the discretion to award attorney's fees and costs to the prevailing party on a motion to set aside or modify the decision of a parenting coordinator. Under Idaho Code § 32-717(D) a court that has entered a judgment or order establishing child custody may appoint a parenting coordinator to report to the court on issues relating to the custody of the child, to engage in collaborative dispute resolution in parenting, and to perform other duties specified by the court, consistent with the court's orders regarding the child. The decisions of the parenting coordinator may sometimes be challenged by the parties. However, repeated challenges can erode the effectiveness of the parenting coordinator, absorb family resources, and bring further uncertainty into the life of the child. The Idaho Supreme Court's Children and Families in the Courts Committee has recommended that a provision be added to the statute stating that the court may award attorney's fees and costs to the prevailing party on a motion to set aside or modify the decision of a parenting coordinator. Giving the court discretion to make such an award will help to promote stability for the family and provide some deterrent against the filing of needless motions.

**Senator Lakey** stated that he appreciates the approach and use of parenting coordinators to reduce court involvement, but has concerns that it may be used too soon. **Judge Dennard** replied that is where the discretion provision comes in. The Court wants the ability to address both the meritless and repetitive claims. The judge will be able to see the history of the claims and make an appropriate decision on that basis. **Senator Lakey** indicated that he had a concern about awarding attorney's fees relating to an appeal being given to a lay person without proper judicial training. **Judge Dennard** pointed out that the parent coordinators are matched to cases where they have a certain amount of training related to the specific issues involved. He went on to indicate that the court really does limit the decision making to areas within the competence of that person, and many times the court coordinators are uniquely fitted to the needs of the child. We are encouraging people to think carefully about pursuing the cases they file. **Senator Lakey** pointed out that there is no language to state that an appeal was brought without basis or fact of law or that it was meritless. He would be more comfortable with this bill if there was a standard like that in the language. **Senator Davis** asked that if this bill doesn't pass, does the court have another basis under the Rules of Civil Procedure to make an award or grant of attorney's fees. **Judge Dennard** said that there may be other areas, but the application may be questionable. That is why they want this provision to make it clear to the judges that they might have this kind of authority. **Senator Davis** asked if Judge Dennard believed that this bill would have the effect of minimizing frivolous petitions to amend the prior determinations that were made, and does it provide a reasonable method of case management for difficult domestic litigation cases. **Judge Dennard** said that the impact upon judicial resources and case management is the highest in cases involving modifications of custody following a divorce. We have taken that problem and tried to address it by moving it out of the judicial system into the hands of people who should have the skill set to work with these individuals. **Senator Davis** asked whether significant progress hadn't been made when the bill for parenting coordinators was first passed. He also wondered whether other states have done something similar with parenting coordinators. **Judge Dennard** replied that the people using the rule were still finding ways to improve it and the way it is currently set up, it is impacting their effectiveness. He knows that other states have used a similar plan, but doesn't know about their success. **Senator Bock** asked about how this works with pro se cases. **Judge Dennard** replied that this process isn't usually used in those types of cases. It is usually used by funded people.

**MOTION:**

**Senator Bock** moved to send **H 446** to the floor with a do pass recommendation. Seconded by **Senator Davis**. "**Senator Werk** would like a report back in a few years to see exactly how the plan worked." The motion carried by **voice vote**. **Senators Lakey, Vick, Nuxoll and Mortimer** requested that they be recorded as voting **nay**.

**HCR 40**

**Representative Bolz** explained the purpose of this legislation is to authorize the Legislative Council to appoint an interim study committee to complete a study of the public defender system in Idaho. Currently there are only seven public defender offices within Idaho serving eight counties with one more county moving to a public defender office. The remainder of the counties contract for public defender services, most of which are flat fee contracts. The 6th Amendment of the U.S. Constitution requires that the accused have the assistance of counsel for their defense. The State of Idaho may delegate certain obligations imposed by the Idaho Constitution to the counties but cannot abdicate its constitutional duty. The Idaho Criminal Justice Commission for over three years had a subcommittee study this issue and reached the conclusion, due to the funding issue as well as other issues, that an interim study committee would be the appropriate approach in looking at this issue. An interim committee was formed and studied the issue during the past interim but found that the issue is of such scope that it could not complete its work in one interim. Legislation is being submitted during this session to begin the process of resolving the public defense issue in Idaho, but further study is necessary to complete the work.

**Senator Werk** mentioned that the legislation states that the committee will consist of 5 Senators and 5 Representatives. It does not specify minority/majority membership. The prior committee had representation from both parties. He asked if it would be his intention that there would be minority representation on this committee. **Representative Bolz** indicated that he hoped the committee would have the same membership as the prior committee since they have background knowledge. He said that there would be minority representation on the new committee. **Senator Hagedorn** wondered if the committees for **HCR 40** and the Justice Reinvestment Oversight Committee could be combined as one. Chairman Lodge and Representative Bolz agree that there is a need for both committees. Justice Reinvestment is looking at the State's system in criminal justice, where as public defenders are also looking at counties. **Senator Davis** indicated that leadership will want a concurrent resolution to proceed with this legislation, and that meeting has not happened yet. He would like to hold this for a week, until a decision was made. **Representative Bolz** said he had talked with the ProTem and he was in favor of passing said legislation, but he would have no problem holding this.

**MOTION:**

**Senator Davis** moved to send **HCR 40** to the floor with a do pass recommendation. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**H 457**

**Michael Kane** - representing Property Casualty Insurers Association, stated the purpose of this bill is to modify the law that prevents a jury from learning that a person who is a plaintiff in a personal injury action stemming from an automobile accident failed to wear a seatbelt. The bill sets limits on the types of cases where the information regarding lack of seatbelt use can be used in court. There are two clarification items being added to this legislation. The first is that cases involving first party actions between the insurance company and the individual himself under a policy of uninsured and underinsured motorist coverage are not allowed. Second, this does not apply to children under the driving age.

**Senator Davis** questioned why language such as "defendant" and "plaintiff" was being used in **H 457**. **Mr. Kane** said because in this instance there will be a court action where there will be a plaintiff and a defendant. It was the choice of the legislative council to use that language.

**MOTION:** **Senator Davis** moved that **H 457** be referred to the 14th Order for amendment. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

**PASSING OF THE GAVEL:** Senator Lodge passed the gavel to Vice Chairman Vick.

**S 1374** **Relating to the Correctional Industries Act - Senator Lodge** stated that there was not enough labor to pick the fruit this summer in the Sunny Slope area. She visited with Director Reinke, Idaho Department of Corrections, about using people in the correctional institutions. Director Reinke answered that there were people available who would like to work, but legislation would be needed to allow the inmates to do the work. **S 1374** would allow the correctional industries to contract with individual employers. Along with **S 1374** Committee has before it an engrossed copy of the amendment to the original legislation. The amendment adds that correctional industries contract with the employer. The amendments are as follows: deletes the language on line 17 "contracts entered into pursuant to the agriculture employee and the inmate shall be paid at least the Idaho minimum wage." This section will provide that the inmate will be an employee of the private agriculture employer; adds on line 24, "all monies derived from such contracts shall be deposited to the Correctional Industries Bettermen Account established in 2015" . Adds after No. 3 on line 25 "inmates shall be compensated for their services pursuant to § 2417 of the Idaho Code." The enactment of this legislation will assure that we are able to get out Idaho perishable crops harvested. Attachment 1 shows some of the substantial loss to Idaho's fruit farmers because of the lack of labor this season. **Senator Vick** asked if anyone was opposed to this legislation. No one was opposed.

**MOTION:** Senator Davis moved that **S 1374** be referred to the 14th Order for possible amendment. Seconded by **Senator Mortimer**. Motion carried by **voice vote**.  
A question was raised by **Senator Werk**. He wondered if the pay for the labor performed by a person in the correctional system would be comparable to that of a worker who was not in prison and did the same work. **Senator Lodge** responded that it would be. Salary would be determined according to their skill and be distributed by the Correctional Industries Betterment Fund. **Senator Werk** indicated that, if this bill does pass, he would like a report on how it worked out in the community.

**PASSING OF THE GAVEL:** Vice Chairman Vick passed the gavel back to Senator Lodge.

**RS 23085** **Senator Lodge** introduced **RS 23085** stating that it was legislation to create the Justice Reinvestment Oversight Committee tasked with the study and monitoring of the performance and outcome measures that have been set forth.

**MOTION:** **Senator Hagedorn** moved to print **RS 23085**. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

**MOTION:** **Senator Mortimer** moved to approve the Minutes of February 14, 2014 and moved for their adoption. The motion was seconded by **Senator Bock**. Motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 3:04 p.m.



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Senator Lodge  
Chair

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Carol Deis  
Secretary

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Sharon Pennington, Asst.  
Secretary

AGENDA  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Friday, March 07, 2014**

SUBJECT	DESCRIPTION	PRESENTER
Vote On Gubernatorial Appointment	Raymond "David" Moore of Blackfoot, Idaho was appointed to the Commission on Pardons and Parole to serve a term commencing February 19, 2014 and expiring January 1, 2017.	
<a href="#">RS23087</a>	Relating to Education	Unanimous consent request from Education Committee
<a href="#">H 459</a>	Relating to Sex Crimes	Representative Malek
<a href="#">H 563</a>	Relating to Video Voyeurism	Representative Malek
<a href="#">S 1379</a>	Relating to Uniform Controlled Substances	Senator Lakey
<a href="#">S 1380</a>	Relating to the Idaho Uniform Business Organization Code	Senator Davis

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge	Sen Hagedorn
Vice Chairman Vick	Sen Lakey
Sen Davis	Sen Bock
Sen Mortimer	Sen Werk
Sen Nuxoll	

COMMITTEE SECRETARY

Carol Deis  
Room: WW48  
Phone: 332-1317  
email: [sjud@senate.idaho.gov](mailto:sjud@senate.idaho.gov)

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, March 07, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Mortimer, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** Senators Davis and Nuxoll

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Senator Lodge** called the meeting to order at 1:32 p.m.

**GUBERNATORIAL APPOINTMENT VOTE:** **Senator Hagedorn** moved to send the gubernatorial appointment of Raymond "David" Moore to the Commission on Pardons and Parole to the floor with a recommendation that it be confirmed by the Senate. **Senator Werk** seconded the motion. The motion was carried by **voice vote**.

**RS 23087** **Relating to Education**, with a letter of unanimous consent request from the Education Committee to print the RS.

**MOTION:** **Senator Mortimer** moved to print **RS 23087** for the Education Committee. The motion was seconded by **Senator Vick**. Motion carried by **voice vote**.

**H 459** **Relating to Sex Crimes: Representative Luke Malek** explained that this bill fixes a gap in the current statute that fails to protect victims molested in the fashion described by law, but who are asleep or unconscious at the time of molestation.

**MOTION:** **Senator Werk** moved to send **H 459** to the floor with a do pass recommendation. The motion was seconded by **Senator Lakey**. Motion passed by **voice vote**.

**Senator Hagedorn** asked how the victim would know the event occurred if they were unaware of it.

**Representative Malek** explained that there are circumstances where that can be shown without the victim knowing at the time that it occurred.

**H 563** **Relating to Video Voyeurism: Representative Malek** explained that current law does not address the sharing of private images without consent for purposes such as revenge, extortion, harassment or humiliation. **H 563** changes the video voyeurism act to cover that behavior in a current statute.

**Senator Vick** asked if there would be an explanation of the referenced United States Code.

**Representative Malek** explained that the language came directly from AT&T. It is standard language that ensures that the Internet Service Provider is not liable for content that is shared over the connection.

**Senator Bock** asked for an explanation of the effect expected from these changes.

**Representative Malek** explained that this change adds the new circumstances but does not change the penalty.

**Senator Bock** was concerned that if someone was acting with reckless disregard or negligent behavior, that it could be considered a felony. He stated that "reasonably should have known" would be a negligent standard and doesn't seem to be a standard for a felony.

Considerable discussion of this concern ensued culminating in **Senator Bock** indicating that he would prefer the standard to be "knew".

**Holly Koole**, Idaho Prosecuting Attorneys Association (Association), stated that the Association has worked with Representative Malek in drafting **H 563** and it does support the bill.

**John Dinger**, Ada County Prosecutor's Office and the Internet Crimes Against Children Task Force, explained that this bill does not create a new crime, but specifies elements of current Code to better protect victims. He pointed out that legislation isn't keeping up with technology. **Mr. Dinger** gave examples of times when he was unable to prosecute because the Code was not specific. He asked that the Committee help to put the statutes in line with where technology is today.

**Representative Malek** explained that with circumstantial evidence elements can be used to prove the evidence and successfully prove the crime beyond a reasonable doubt as was pointed out by Ms. Koole and Mr. Dinger.

**MOTION:**

**Senator Hagdorn** moved to send **H 563** to the floor with a do pass recommendation. The motion was seconded by **Senator Lakey**.

**SUBSTITUTE  
MOTION:**

**Senator Werk** moved that **H 563** be held in Committee at the call of the Chair. Motion failed for lack of second.

**Senator Hagedorn** explained that because the language of the bill has been vetted by prosecutors and trial lawyers, and because the language is similar to and consistent with language currently in Code, he will be supporting the original motion.

**Senator Bock** stated that the testimony has reduced his concerns. He asked that Senator Lakey share his questions.

**Senator Lakey** said he is still concerned with the knowledge issue.

**Senator Werk** explained that he would like to hear Senator Davis's assessment of this bill.

**ORIGINAL  
MOTION VOTE:**

Motion to send **H 563** to the floor with a do pass recommendation passed by **voice vote**.

**S 1379**

**Relating to Uniform Controlled Substances:** **Senator Todd Lakey** explained that this bill takes a categorical approach to listing controlled substances. This would allow drugs that have been altered but still produce similar effects to be included without legislative action on each alteration.

**Berk Fraser**, Deputy Executive, Idaho Board of Pharmacy (Board), stated that the Board supports **S 1379**.

**Elisha Figueroa**, Administrator of the Office of Drug Policy, stated the support of her office for this bill. She cited several instances of abuse of these dangerous drugs.

**Corinna Owsley**, Idaho State Police Forensic Services, explained that they are trying to update the Code with the new designer drugs. The legislation contains three general classes of structures and takes the same categorical approach as the Code uses for other drugs which has been very successful. In the development of the bill, drugs used for legitimate purposes have been eliminated. **Ms. Owsley** explained problems that are involved with relying on the federal laws.

**Senator Bock** asked why we don't have an analog law.

**Ms. Owsley** replied that each time you are proving a case, you have to prove that the drug has the same pharmacological activity, but there are not research studies on them to show how they affect the body.

**MOTION:**

**Senator Hagedorn** moved that **S 1379** be sent to the floor with a do pass recommendation. The motion was seconded by **Senator Vick**. The motion passed by **voice vote**.

**S 1380**

**Senator Hagedorn** moved that **S 1380** be held in committee. The motion was seconded by **Senator Bock**. The motion passed by **voice vote**.

**ADJOURNED:**

There being no further business, **Chairman Lodge** adjourned the meeting at 2:27 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

AGENDA  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Monday, March 10, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>H 509</u></a>	Relating to Court Technology	Patti Tobias, Administrative Director of the Courts
<a href="#"><u>S 1394</u></a>	Relating to Salaries of Judges	Senator Davis
<a href="#"><u>H 461</u></a>	Relating to Being Under the Influence of Alcohol or Drugs	Representative Malek
<a href="#"><u>H 462</u></a>	Relating to Responsibilities of Ski Area	Representative Malek
<a href="#"><u>H 542</u></a>	Relating to Idaho Public Defense Act	Representative Bolz
<a href="#"><u>H 562</u></a>	Relating to Bonds	Brian Kane, Office of the Attorney General
<a href="#"><u>S 1393</u></a>	Relating to the Special Committee on Criminal Justice Reinvestment Oversight	Senator Lodge

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge  
Vice Chairman Vick  
Sen Davis  
Sen Mortimer  
Sen Nuxoll

Sen Hagedorn  
Sen Lakey  
Sen Bock  
Sen Werk

COMMITTEE SECRETARY

Carol Deis  
Room: WW48  
Phone: 332-1317  
email: [sjud@senate.idaho.gov](mailto:sjud@senate.idaho.gov)

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, March 10, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/  
EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:31 p.m. and asked the secretary to call the roll.

**H 509** **Relating to Court Technology - Patti Tobias** Administrative Director of the Courts, This bill, along with multiple one-time, bridge funding from Joint Finance and Appropriation Committee (JFAC), will fund the five year business plan, and beyond. **H 509** provides a set of graduated civil filing fees to provide the increase in ongoing funds for court technology including: 1) \$125 increase for civil cases filed in district court; 2) \$70 increase for appearances and civil cases filed in the magistrate division; and 3) \$20 increase for miscellaneous actions. Why a one-time fee at filing—only on civil cases? Many states, as they move to E-filing, have charged transaction fees for all pleadings and documents filed, resulting in an "accounting nightmare" for the courts, attorneys, and their clients throughout the life of their case. After considerable research and input, we concluded a one-time fee, a filing, would be a much more practical, prudent, and efficient approach. We know absolutely we can save at least one hour of an attorney's hourly rate in each civil case filed in district court with the efficiencies achieved and cost savings of E-filing, E-records, and video conferencing. These time and cost savings will more than offset the one-time up-front filing fee for Idahoans. These filing fees will remain on the low side of Western states with comparable jurisdiction.

In 1997 the courts established the ISTARS technology fund. We have now stretched the software and hardware systems as far as possible. ISTARS has reached its end-of-life. The five year business plan to replace and modernize the case management system for all court cases in our trial and appellate courts, move to electronic filing and storage of all court documents, and expand video conferencing across the state. The request for proposal was issued nationwide and a new technology solution was selected called Odyssey. It is the most mature, highly developed court case management system on the market today. It has the most functionality, at the lowest overall cost.

Odyssey will serve numerous functions:

- On any given work day, nearly 17,000 new court cases are filed. More than 500 clerks in 53 court locations accept new court documents, schedule hearing, send notices, and update case records.
- The financial management system will assist courts in collecting over \$200,000 daily in fines, fees, and restitution, totaling more than \$55 million annually, distributed to over 200 state and local entities.
- A judicial workbench will allow judges to readily access secure case information and conduct legal research from the bench.
- Our vision is to continue to serve as the hub for data exchange between state and county agencies.
- Go live for the new case management system will begin in Twin Falls County, May 2015.
- Six months later, the system will be deployed in Ada County, followed by three regional implementations.
- Electronic filing will follow 90 days after the case management system goes live in a county or region.
- We expect to achieve significant cost savings and efficiencies by:
  - No lost documents or files in the new world.
  - Time savings for court clerks.
  - Less chance for human error.
  - Frees up huge amounts of limited physical space in crowded county courthouses and storage facilities.

This was a slide presentation (see attachment 1)

**Former Chief Justice Linda Copple Trout** stated she was appearing as the Chair of the Supreme Courts Design and Implementation Team which is the group in charge of the implementation of the new software. This project has been a comprehensive process and because of that there will be a smooth transition from the current case management system to Odyssey and that all involved will be able to move forward together. The Idaho Supreme Court first created the Court Technology Committee several years ago. The purpose of that committee is to envision how the courts can better handle cases in a timely and efficient manner through the use of new technologies. The Design and Implementation Team is charged with working with the vendor, Tyler, to do work necessary to implement Odyssey and have a smooth transition from ISTARS. The Team has written out every practice and process for every type of court case. They then determine whether there was a gap between the way our court system functions and the way Odyssey will handle the processes. They found that the vast majority of the processes are the same or similar to what our courts do. Tyler will give a quote for further software development to handle the court processes that are not in the systems functions. The Team will prioritize the need whether it is critical, high importance or low importance. Built within the budget is an amount for software development and they are working within those dollars for additional software development.



There are a number of court committees, plus work groups from magistrate and district judges who are reviewing the business practices to find better uniformed practices for handling court cases. Included in this is standardizing our most frequently used court forms. The move to a statewide integrated software system has provided the courts with a unique opportunity to look at how they do their work and make sure they have one unified court system. They are also meeting with all of their justice partners the Department of Correction, Health and Welfare, Department of Juvenile Corrections, Prosecutors, etc. to evaluate how the new software can do a better job in transferring information back forth.

**Judge Wood** stated that the Committee had before them a hand-out (see attachment 3) which presents a summary of eight sections which will amend an existing statute.

**Senator Davis** asked if this software is an off-the-shelf product and will this make us vendor dependent on Odyssey. **Patti Tobias** responded that the courts will be vendor dependant on Odyssey, but were also vendor dependent for 25 years on ISTARS. **Chief Justice Trout** explained one of the advantages to the Odyssey product is that it is highly configurable. The software will afford the courts the opportunity to go in as there are changes to the law or staff and make those changes in-house without having to rely on the vendor, which is a dramatic change from the process that they have depended on for the last 25 years. **Senator Bock** stated on lines 35, 36 on page 4, there is a reference to \$120 being the fee for the magistrates division. How is the \$120 based upon the numbers on page 5 of the bill? **Judge Wood** answered \$10 plus \$70 equals the \$80. The remainder of the money is fees along with the technical fee. **Senator Nuxoll** asked when were these fees last reviewed and raised? **Patti Tobias** replied that she could trace the court technology fee for ISTAR. These fees were first established in 1997 and a \$5 fee was established on all criminal, infractions and civil cases. In 2006 that fee was increased to \$10. This year as part of **H 509** the fees are being increased only on the civil side.

**Senator Nuxoll** asked is this how the courts usually pay for their technology needs? **Ms. Tobias** answered that the Idaho Legislature first established the court technology fund in the 1990s to pay for statewide court technology for all of the district and magistrate divisions. By statute the counties have that responsibility to provide personal, facilities and operating expenses. The Idaho Legislature believed it was important for the third branch of government to be able to administer a statewide system of court technology so the State of Idaho could maintain accurate records of all court proceedings. To be able to transmit those records in an electronic fashion to all of the many entities that they work with. The Committee increased the court technology fund and requested multiple one-time bridge funding from the JFAC. **Vice Chairman Vick** asked could you explain how the courts arrived at the new fees? **Ms. Tobias** responded that they looked at the most complex and detailed work where the software upgrade would save them the most time. In district court there are many more filings, documents, pleadings, records, and hearing scheduled so they chose this court for the fee increase. In magistrate court there are cases that do require significant case processing time, entries and scheduling. They balanced the number of cases being filed versus the complexity and volume of documents.

**MOTION:**

**Senator Mortimer** moved to send **H 509** to the floor with a do pass recommendation. Seconded by **Senator Davis**. The motion carried by **voice vote**.

**S 1394**

**Relating to Salaries of Judges - Senator Davis** stated the bill before you today is intended to be the front loading of two years of compensation for the judiciary. The principle target was to address the issue of recruitment of judges and what they pay a magistrate versus a district court judge. In the recruitment of district judges the delta of \$5,000 has not been enough to encourage them to apply for magistrate judges positions. The adjusted judicial salaries were taken to the joint majority leadership for their recommendation. This legislation adjusts judicial salaries and increases the differences between justices and judges holding office at different levels within the judiciary. It increases pay for magistrate judges by 2.5% from \$109,300 to 112,000. This bill also increases the difference between the rate of pay for district judges and magistrate judges from \$5,000 to \$12,000 per year, resulting in an 8.5% increase for district judges.

Beginning in FY 2015, the Supreme Court Justices will receive a 10.7% increase to \$135,000 with the Chief Justice receiving \$2,000 more than the other justices. The Court of Appeals judges will receive a 7.5% increase to \$130,000, with the Chief Judge receiving differential pay for the first time of \$2,000 more than what the other Court of Appeals Judges are paid.

In FY 2017, the salaries for the Justices of the Supreme Court will increase by 3.7% up to \$140,000, and the Chief Justice's salary will increase by 3.6% up to \$142,000. The Legislature is making three large investments in the judiciary this year: 1) technology bill; 2) judicial salary increases; and 3) increased costs associated with the shift of the judges retirement fund to Public Employee Retirement System of Idaho (PERSI). **Senator Hagedorn** asked did they look at the pay for performance angle when the salaries were reviewed. **Senator Davis** answered that the judges would prefer not to be on some pay for performance system historically the judiciary has asked the Legislature to follow this model. **Senator Mortimer** asked when was the last raise given and is the state employees one and one this year calculated into the salaries. **Senator Davis** replied that the budget that has been approved by the Employee Compensation Committee (CEC) to increase the state employee salaries is not for the benefit of the judiciary.

**MOTION:**

**Senator Werk** moved to send **S 1394** to the floor with a do pass recommendation. Seconded by **Senator Hagedorn**. **Senator Lodge** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, she has a conflict but still wishes to vote on **S 1394**. **Senator Bock** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, he has a conflict but still wishes to vote on **S 1394**. The motion carried by **voice vote**.

**H 461**

**Relating to Being Under the influence of Alcohol of Drugs - Representative Malek** stated that the State has an incarceration problem and this legislation will allow courts and counties to administer a 24/7 testing program as an alternative to being incarcerated while under the preview of the court. Offenders may voluntarily sign up for the program in lieu of being incarcerated. They would be tested twice a day so they can go back to work and continue on with life as they are under the jurisdiction of the court. These offenders will be tested twice a day and will pay a nominal fee to support the program. **Senator Hagedorn** said typically when a person gets a DUI they lose their license for the first 30 days. How would these people test twice a day. **Representative Malek** replied that would be up to them. They would have to get a ride or use public transportation. **Paul Panther** - Chief of the Criminal Law Division of the Attorney Generals Office led the Committee through the bill. **Vice Chairman Vick** asked what will be the procedure for developing the fee for this program. **Vice Chairman Vick** stated do you have an idea of what this fee might be?

**Mr. Panther** stated it varies from state to state but the top end is \$2 per test. **Senator Hagedorn** asked do the courts have the ability to not suspend a license for a DUI. **Mr. Panther** answered a court can issue a judgement and suspend the license, but this bill in Subsection 4 gives specific authority not to suspend the license. **Senator Hagedorn** clarified that an individual who chooses to do the testing because of their DUI does not lose their license and may drive to the testing. **Mr. Panther** replied that is the idea of this legislation.

**Judge Wood** testified to how important drug and alcohol testing is to the courts, public and the defendant. The Idaho Courts are strong proponents of additional drug and alcohol testing in all stages of the criminal process from pre-trial release to monitoring probation. The courts believe that this frequent drug and alcohol testing of the criminal justice population is good public policy for many reasons. First, there is a very positive cost to benefit ratio. Drug and alcohol testing is a regular component of jail release conditions whether pre-trial, awaiting sentencing or on probation. Reliable testing programs give judges alternatives to keeping some of these defendants in jail awaiting the next judicial proceedings. In the right cases, releasing individuals out in the community is a better procedure then putting them in jail. His experience, while serving as a trial judge, was that a twice a day testing cost was much less then a day in jail. Drug and alcohol testing provides a deterrent to future use and rapidly confirms offender compliance with conditions and guides responses to reward abstinence guiding rapid response to relapse. Drug and alcohol testing is also integral to treatment by providing offenders with external accountability as they refine their coping and refusal skills. Within the recovery community itself abstinence serves as a role model to others in that same community. Testing of this type also serves as adjunct to community based treatment and rehabilitation in other ways by improving public safety, offender accountability to employers, and families and can allows the offender to be in a community and be productive by earning a wage, paying taxes, supporting dependants and purchasing goods and services with the wages they earn which they could not earn if they were sitting in jail. Lastly, Idaho's Problem Solving Courts have adopted statewide standards that endorse frequent random drug and alcohol testing as essential for offender monitoring and rehabilitation. The standards recognize that alcohol testing may be necessary on a more frequent basis due to the shorter window of attention time for use. This 24/7 program allows for this attention in our community where such programs are not available.

**MOTION:**

**Senator Hagedorn** moved to send **H 461** to the floor with a do pass recommendation. Seconded by **Senator Nuxoll**. The motion carried by **voice vote**.

**H 462**

**Relating to Responsibilities of Ski Area - Representative Malek** explained this legislation deals with amendments to the current Ski Liability Act in the State of Idaho. The current act has not been updated since its adoption in 1979 and much has changed in the realm of skiing since its adoption. The amendments are intended to modernize the terms within the Act. The amendments clarify four issues: 1) the definition of skiers includes snow boarders and tubers/sledders; 2) the definition of a terrain park; 3) a terrain park falls within the inherent risks in skiing; and 4) snow immersions and inbound avalanches qualify as inherent risks. **Senator Davis** asked for clarification on page 3, the current statute states "any skier expressly assumes the risk of and legal responsibility for any injury to person or property" and understands the assumption of risk. The phrasing on line 4, "any movement of snow including, but not limited to" does that mean that the ski hill operator who has foreseeable knowledge of a avalanche assumes no duty to protect the skiers on the hill.

**Representative Malek** answered that there are nine affirmative steps, which are listed in Section 2, that must be adhered to by the operators but there is no requirement for the operator to reduce the risk other than losing people in an avalanche would be bad for business. There is not always the ability for the operator to mitigate a risk that they cannot foresee, there are inbound slides that do take place at these ski resorts. **Senator Davis** asked about the policy of not imposing any standard of responsibility of care for things that are reasonably foreseeable, identifiable or reckless on the ski hill. **Representative Malek** said the policy side of this legislation is that snow conditions are constantly changing and the risks are always inherent, there are no standards when it comes to managing snow. Snow often confounds the best experts so for the operators to have foreseeable liability is not good policy for the State of Idaho. **Senator Davis** asked what about at least including a reckless disregard standard. **Representative Malek** answered snow conditions are completely unpredictable so to place any burden on the operators, even a reckless standard, would be imprudent. Snow is in mother natures control. On the policy side they would argue that this is not good policy and on the law side that there is no applicable standard.

**Senator Werk** asked under Section 3, § 6-1106 duties of skiers, skiing is a hazardous sport "says any movement of snow including man-made." This speaks to man moving snow and balances that against the standard in Section 2 (10) "not intentionally or cause injury." If the operator does something negligent they will not be held responsible. The skier would assume the risk and legal responsibility for running into the snow that was moved by the ski resort. **Representative Malek** answered that there is no way to create a standard for the safest way to handle snow movement. The resort could put snow in one place and it could be safe one year and the conditions could change and the next year and create an unsafe condition. **Senator Werk** stated under Section 1, § 6-1102 there is a definition for freestyle terrain. Under Section 2, § 6-1103 (10) states "not to intentionally or negligently cause injury to any person" and every person who skis assumes the risk. If a resort decides to build a jump in a terrain park, but they don't build it correctly and it collapses, in this legislation all responsibility has been shifted over to the skier that uses the feature. **Representative Malek** stated that there are no standards for terrain parks. For a skier that is injured accusing the resort that the feature was not constructed correctly; there are no standards nationwide to hold the operators to the liability. **Senator Bock** said let's assume there is a hill in a resort that is in an area where avalanches have happened in prior seasons and there are certain kinds of conditions that make this hill prone to avalanche danger. The operator is aware that in past ski seasons this hill is prone to avalanche activity and the snow conditions are such on a particular day that they might need to close down the hill but the operator chooses not to take this precaution. Under the language of this legislation "any movement of snow" even if it is predictable would absolve the operator from liability. **Representative Malek** restated that there is no way to create a standard that is applicable to snow so an operator cannot be held liable for its unpredictability. Snow conditions can change so fast and it is so inherently dangerous, that a standard is impossible. **Senator Bock** stated that if this language is included in this statute it will mean that nobody is going to be able to put on evidence of what kind of conditions to establish. **Representative Malek** responded that this is the crux of the issue, which is will they err on the side of skiers assuming this risk or operators owning the risk. From a policy perspective since skiers have strapped skis to their shoes they have assumed the risk for the dangerous conditions of the sport. If operators assumed the liability that would create liability situations that would be detrimental to Idaho businesses and would open up every injury on the ski hill to liability and a trial.

**Matt Walters** testified on behalf of the Idaho Skier Association, stating since the passage of this legislation in 1979 determining that skiing has inherent risks and there must be protection for the ski area operators. In this legislation there are nine duties that the operator must assume to operate the ski hill and provide compliance with the MT Standard for the Aerial Tramways. They gave the expressed assumption under § 6-1106 of the duties that the skiers assume. Movement of snow language came from other state's ski operators legislation. The purpose of this language is to address inbound avalanches. There are no accepted guidelines in avalanche maintenance. If you make a standard reasonably foreseeable you have changed the Act, it will not be summary judgment; no protection for ski operators. There are no accepted standards for terrain parks because snow is ever changing. **Senator Davis** stated his concerns dealt with the "any movement of snow" by the operator grooming the snow and thus causing injury to a skier. **Mr. Walters** explained that grooming is already covered by the Act there are only nine duties for operators in this legislation. **Senator Werk** stated if there is no responsibility there is no reason to take care. This legislation says to resorts no rules. **Mr. Walters** answered your question is why the Act was enacted. If you put a standard of care when you are grooming snow the operator will be facing lawsuits.

**Kurt Holzer** - ITLA, asked the Committee to hold this bill in Committee stating that there are problems with the language. This bill fundamentally changes the nature of the immunities offer. The terrain park element under this legislation does not hold the operator liable. The severity and frequency of injuries are much higher on these terrain park features than in hill skiing. This legislation discourages the search for safer better practices in constructing the features in the terrain parks. **Senator Davis** reminded the Committee that skiing is a big industry for our State and we are competing with other states for the business. Some of the modifications that are being made to ski hills today are to draw visitors to our hills.

**Phil Edholm** - President/CEO of Look Out Pass and President of Idaho Ski Association, stated that all 18 Idaho Ski Area Association members support this **H 462**. This legislation is their efforts to modernize the Act to reflect the changes in the industry from 1979. Since there are inherent risks in the sport of skiing, which are impossible to eliminate, it is important to define those areas of responsibility for the ski areas and to define those risks which the skier expressly assumes, for which there can be no recovery. The protection provided by the Act is critical to the operation of ski areas in Idaho. **Alan Moore** - Operator of Bogus Basin, stated that there are two areas in a ski area that have high injury rates: 1) the learn to ski area and 2) terrain parks which basically attract teenage boys. The injury rate at Bogus Basin has been 3/10th of 1 percent this year. The terrain parks have not increased the overall injury rate at their ski area and they try to be extremely careful. **Skip Smyser** representing Idaho Ski Area Association, stated that in the process of crafting the legislation they have worked closely with the insurance industry, the National Ski Area Association, and the Idaho Trial Lawyers who made suggestions in the legislation that were adopted. What is currently happening on the ski slopes is dramatically different then 20 years ago. Much of the new methods of skiing come from the skateboard parks. They believe that this is a modernization of the Act and appropriate at this point in time.

**MOTION:**

**Senator Davis** moved to send **H 462** to the floor with a do pass recommendation. Seconded by **Senator Nuxoll**. The motion carried by **voice vote**.

**PASSING OF  
GAVEL:**

Senator Lodge passed the gavel to Vice Chairman Vick.

**S 1393**                    **Relating to the Special Committee on Criminal Justice Reinvestment Oversight - Senator Davis** stated that the Committee has had a very robust explanation of **S 1393** at the print hearing and unless there is some reason to repeat the testimony he will make a motion.

**MOTION:**                **Senator Davis** moved to send **S 1393** to the floor with a do pass recommendation. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

**PASSING OF GAVEL:**        Vice Chairman Vick passed the gavel to Senator Lodge.

**ADJOURNED:**        There being no further business, the meeting adjourned at 3:54 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

AGENDA  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Wednesday, March 12, 2014**

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">H 542</a>	Relating to the Idaho Public Defense Act	Representative Bolz
<a href="#">H 562</a>	Relating to Bonds	Brian Kane, Office of the Attorney General
<a href="#">H 518</a>	Relating to Scrap Metal Businesses	Representative Malek
<a href="#">H 455</a>	Relating to Fees	Michael Kane, Sheriffs Association
<a href="#">H 434</a>	Relating to Punishment for Infraction	Representative Luker
<a href="#">H 463</a>	Relating to the Idaho Building Code Act	Representative Luker
<a href="#">H464</a>	Relating to Juvenile Proceedings	Representative Christy Perry
PRESENTATION	Sheriff Association County Jails and State Prisoners	Paul Wilde, President of ISA, Bonneville County
	Approval of February 17, 2014 Minutes	Senator Davis and Senator Lakey
	Approval of February 19, 2014 Minutes	Vice Chairman Vick and Senator Lakey

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge	Sen Hagedorn
Vice Chairman Vick	Sen Lakey
Sen Davis	Sen Bock
Sen Mortimer	Sen Werk
Sen Nuxoll	

COMMITTEE SECRETARY

Carol Deis  
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MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, March 12, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:30 p.m. and asked the secretary to call the roll.

**H 464** **Relating to Juvenile Proceedings - Representative Christy Perry** explained that the intent of this legislation is to require that a peace officer must consult with the Idaho Department of Health and Welfare's Child Protection Division before declaring a child in imminent danger and taking them into state care. The purpose is to avoid taking children into state care unless it is absolutely necessary by providing consultation and education to the peace officer before action is taken. This decreases unnecessary trauma to the child and expense to the State. **Senator Bock** asked is it possible for an officer to reach someone at the Department 24/7. **Representative Perry** answered that the Department has a centralized child intake system. **Senator Bock** said assuming this consult is made between the Department and the officer on the scene, how is the Department going to know exactly what is going on for an imminent danger situation and be able to make a recommendation to take further steps. How much time would elapse between the time that the decision is made and when the proper action would be taken? **Representative Perry** explained the bill allows the peace officer or another representative of that agency to call the Department. The Department has guidelines of what constitutes imminent danger, and they might have a family history in their database to assist in the decision to take the child out of the family. The Department may respond that they will send out a social worker to the scene.

**Senator Hagedorn** stated he was trying to understand what the legislation is trying to fix. Are we targeting the real issue by having the peace officers calling someone who knows the definition of imminent danger? **Representative Perry** replied the Department has statistics that show many children were taken into child protection that did not need to be placed under protection. If the children are being reunited with their families within two to three weeks should the officers have ever taken the children out of the home or could they have found a family member quicker or put a safety plan in place? The purpose of the legislation is to place that consult call to see if the imminent danger really fits one of the definitions. The bill is geared toward consulting with the Department so that they don't take children out of the home that do not need to be taken. **Senator Hagedorn** asked on line 24, page 1, the bill states the child can only be held for a maximum of 48 hours. Is there some consult that happens during that 48 hour period. What purpose does the consult up-front between the peace officer and the Department afford versus the 48 hour period? **Representative Perry** explained once the child is declared in imminent danger that action sets into motion a series of judicial procedures that must occur, and a child can be gone four to five days before they get a shelter care hearing.



The procedure laid out in this legislation asked for the consult of the situation with the Department and in that process it might be determined that the child should not enter the system. **Senator Werk** asked how is a call from a dispatcher going to achieve any realistic opportunity for a review of the situation when it comes to an officer being on scene identifying what they perceive as imminent danger to the child. How will this scenario provide any meaningful feedback? **Representative Perry** stated the OPE report reflected that a large number of children in the juvenile justice system have had child protection services in their backgrounds. A Portland State University social service report reflected the trauma of the removal of the child and the child protective process on the child. There were probably 300 children that were taken into the system last year that should not have been taken. By the dispatcher making the call to the Department many of these cases might have different outcomes because the Department may have records on the family and how to proceed. The Department has very clear guidelines that are standardized across the State. **Senator Werk** responded that he believes this is a training and guidelines issue; not a phone call issue. **Senator Lakey** stated that he has handled many of these cases as a prosecutor; and he never had concern with how law enforcement handled an imminent danger case. What does the word "consult" mean. **Senator Lakey** believes that the law enforcement individual on the scene of a domestic dispute should have the final call because they are there. What if the individual on the phone from the Department says they should not take the child.

**Representative Perry** answered that the definition of consult means placing a phone call and presenting the facts of the child's situation. Nobody wants to take away the ultimate authority of the police officer on the scene even after the consult, if the officer determines that the child needs protection there is nothing in this legislation that would preclude that action. **Senator Davis** stated Ms. Perry had referenced the Director Sharon Harrigfeld, of Juvenile Corrections, in the presentation of the bill. Had Director Harrigfeld found value in the bill; does that mean her Department supports the bill? **Representative Perry** answered Director Harrigfeld relayed to her that she could not testify on this legislation because it did not affect their Department directly. Director Harrigfeld does support the bill. **Senator Davis** asked if this legislation fails is law enforcement precluded from making a consult phone call to the Department. **Representative Perry** responded that there is nothing in statute that would hinder them from making the consult call. **Senator Bock** said this legislation directs the enforcement agency to make the phone call to consult. If this bill passed what would be the consequences if the officer does not consult. **Representative Perry** said that under this legislation the law enforcement officer is directed to make the call to the Department.

**Michael Kane** - representing the Sheriffs Association, stated there is nothing in this bill that gives the Department veto power over the ability to declare a child in imminent danger. The officers know what to do, most of them have been doing this work for decades and are quite capable of understanding what the law is and applying it appropriately. It seems logical to the Association, for the officer at the scene to contact the 24/7 hotline. There is nothing in the bill that prevents an officer from doing his duty while waiting for a ruling from the Department nor is there anything that says they must wait until the Department arrives at the scene. A simple consult call to the Department asking do you know this family, have you dealt with them before and what information do you have that would dissuade us from removing the child from this family situation? **Senator Werk** stated the officers on the scene always have the option to call the Department. **Mr. Kane** responded that some of the officers are not using the 24/7 hotline as added support for their decisions concerning child endangerment.

**Holly Koole** - representing the Idaho Prosecuting Attorneys Association (IPAA), stated that the Association is not in support of this bill. **Galan Carlson**, Deputy Prosecuting Attorney for Ada County, currently the supervisor of the Child Protection Unit, spoke in opposition of this bill (see Attachment 1) He had concerns about the word consult and how meaningful a phone call would be to a Department employee who is not on the scene. What type of information would be shared? In this scenario it might make an officer, who does not regularly deal with the Child Protective Act, hesitate at the scene and question their good faith judgment. Declarations of imminent danger are made during dynamic situations. Law enforcement on scene are usually dealing with more factors than just the removal of the child, such as domestic violence, the presence of drugs, suicidal parents, and unsanitary homes; they need to be able to make good faith decisions quickly.

**Rob Luce** - , Department of Health and Welfare, stated that the Department has the resources to handle these calls from the officers and that 80 percent of the 24/7 calls are answered live and they have no intention to overrule law enforcement.

**Sean Stace** - Fraternal Order of Police, spoke in opposition of this bill stating that he has been a law enforcement officer for over 14 years and is assigned as a special victims unit detective investigating child abuse. This legislation requires law enforcement to consult call, and he already follows this procedure in imminent danger cases. When he is in the middle of a case and removing a child from a dangerous situation he has no time to call the Department. There is no way of sheltering a child in this situation without calling the Department. **Mr. Stace** asked that the procedures he is currently following in these cases remain in the same order. This bill will only make a law enforcement officer's job more difficult because most of them are not comfortable in these child endangerment investigations, and they are hesitant to know how to proceed. This legislation will impede them from doing their job.

**Jean Fisher** - Deputy Prosecutor Ada County, represents children sexual assault and domestic violence, spoke in opposition to the bill, stating that she believes the system is not broken. It will add a layer that is more complicated. Law enforcement by and large gets it right. These are complicated cases as the child protection case moves forward, and at the same time the criminal cases of the adults involved are also moving forward. If the law enforcement officer is relying on the Department to advise them in these cases that will affect the cases.

**Representative Perry** stated if this bill is not the solution she will come back next year with a better solution. She believes there needs to be some changes in this entire process and it will affect the agencies. If someone on the Committee would like to make a motion to hold **H 464** in Committee she would accept that decision.

**MOTION:**

**Senator Nuxoll** moved to hold **H 464** in Committee. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**H 542**

**Relating to the Idaho Public Defense Act Relating to Bonds - Representative Bolz** stated **H 542** is the result of the Public Defender Reform Interim Committee that was appointed last session. This legislation is the beginning of the process of the Idaho Public Defender System and the compliance with the system under the United States Constitution, Article 1, Section 13 of the Idaho Constitution. Public defense is a state requirement, and Idaho chose to give this responsibility to the counties. There are currently seven public defender offices in the State of Idaho providing services to eight different counties. The counties are footing the bill for this system in the amount of \$22 million. The Association of Idaho Counties has assured him that the counties do not want to take these funds away. The bill establishes the State Public Defense Commission within the department of self-governing agencies. The Commission is to consist of seven members who are appointed by the Governor. The Commission does not receive any honorarium but would receive expenses for their time. The powers and duties

of the Commission would be to make recommendations to the Legislature for legislation on Public Defense System issues including but not limited to: court requirements for contracts; qualifications and experience standards; enforcement mechanisms; funding issues dealing with training; data collection, recording efforts and conflict cases. The Commission is to hire an executive director and others but this legislation only authorizes a 1.5 FTE. The county commissioners of each county shall provide for public defense in one of the following ways: to establish and maintain a public defender office; to join one or two more counties together, must be in same judicial district; contract with existing office of public defenders; or contract with a defending attorney.

**MOTION:** **Senator Mortimer** moved to send **H 542** to the floor with a do pass recommendation. Seconded by **Senator Werk**. The motion carried by **voice vote**.

**H 562** **Relating to Bonds - Brian Kane**, Office of the Attorney General (OAG), explained this legislation will remove three statutes from the books. Sections 1, 2, and 3 remove the requirement that the Attorney General deliver opinions to local city and county housing authorities, as well as, universities within the State. Their office has nothing to do with the bond issue for these entities, but they are brought before their office to deliver an opinion on a process that their Office knows nothing about. By having the OAG deliver an opinion it confuses the issue of the independence of these bodies. Section 4 is an addition which allows the delegation of authority with regard to bonding. Once an entity has gone through all of the legal steps necessary to issue a bond they can then delegate authority to an individual within the board to take the bonds to market. The number one reason for delegation of authority is important because at this point in time bond markets have become much more dynamic entities. This authority will allow entities to enter the market at the most advantageous time for them which will result in savings based on interest rates if they get into the market at the opportune time. **Senator Lakey** gave a brief comment in support of the motion. There are two layers of lawyers looking at the bond issuance in addition to the Attorney General. There is local counsel for these particular entities, and they typically hire outside special bond counsel that does nothing but this type of work. **Senator Lakey** believes that this is a good bill.

**MOTION:** **Senator Bock** moved to send **H 562** to the floor with a do pass recommendation. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

**PRESENTATION:** **Chairman Lodge** introduced Sheriff Paul Wilde who is the President of the Sheriffs Association. **Chairman Lodge** said that Sheriff Wilde was going to give the Committee a presentation today but because of time constraints has offered to send a copy of his presentation to all the members on the Committee.

**MOTION:** **Senator Davis** moved to approve the Minutes of February 17, 2014. Seconded by **Senator Bock**. The motion carried by **voice vote**.

**MOTION:** **Vice Chairman Vick** moved to approve the Minutes of February 19, 2014. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 3:01 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary

**AMENDED AGENDA #1**  
**SENATE JUDICIARY & RULES COMMITTEE**  
**1:30 P.M.**  
**Room WW54**  
**Friday, March 14, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
Page Graduation:	Farewell to Committee Page Meredith Breen	Senator Lodge
Presentation:	Tyler Kelly and Sean Schupack	
<a href="#">H 518</a>	Relating to Scrap Metal Businesses	Representative Malek
<a href="#">H 455</a>	Relating to Fees	Michael Kane, Sheriffs Association
<a href="#">H 434</a>	Relating to Punishment for Infraction	Representative Luker
<a href="#">H 463</a>	Relating to the Idaho Building Code Act	Representative Luker
	Approval of February 21, 2014	
	Approval of February 24, 2014	

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Lodge	Sen Hagedorn
Vice Chairman Vick	Sen Lakey
Sen Davis	Sen Bock
Sen Mortimer	Sen Werk
Sen Nuxoll	

COMMITTEE SECRETARY

Carol Deis  
Room: WW48  
Phone: 332-1317  
email: [sjud@senate.idaho.gov](mailto:sjud@senate.idaho.gov)

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, March 14, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** Senator Nuxoll

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lodge** called the meeting to order at 1:33 p.m.

**PAGE GRADUATION:** **Chairman Lodge** stated the Committee has had a great Page during this last six week period and asked Claire Breen to tell the Committee what she has learned during her time with the Senate and also what her plans are for the future.

**PRESENTATION:** **Tyler Kelly and Sean Schupack - Chairman Lodge** presented the two interns who assisted the Committee through the justice reinvestment legislation and helped with other research. She introduced Sean Schupack and asked that he tell the Committee about himself and his academic plans. **Tyler Kelly** recapped what he had learned during his internship and his academic plans for the future.

**H 518** **Relating to Scrap Metal Businesses - Representative Malek** stated last year he proposed some amendments to the Scrap Metal Act. At that time there were concerns about the businesses that would be affected by the proposed legislation. During the interim the stakeholders met and crafted the language that is in this negotiated legislation before you today. **Neil Colwell** - representing Avista Corporation, explained that the scrap metal industry would support the legislation that was introduced last year on the condition that there be a comprehensive review of the scrap metal law. The Industries concerns were implementation of the legislation in their businesses. The stakeholders were scrap metal dealers, law enforcement, utilities, agriculture, large contractors and home builders who met to draft the changes in this bill.

**Kendara Dean** - employee of Western Recycling, stated their business was one of the stakeholders in the collaborative effort to draft the legislation. The scrap metal dealers had the following concerns: 1) the definition of commercial metal property and that the definition be refined in the bill; 2) no exemption of certain types of companies; all entities buying and selling scrap metal should fall under the rules of the legislation; 3) provide for more specific detail on the circumstances by which a scrap metal dealer must make photographic images of its customers; 4) modernize the method of payments on commercial accounts; 5) providing records to law enforcement; 6) specified time limit for retaining the records; 7) reasonable protections from liability; and 8) entities and individuals that donate scrap metal. All of these items are included in the legislation: 1) the refined definition of commercial metal property; 2) exemptions were aligned so that businesses are exempt as long as an entity does not meet the definition of a scrap metal dealer; 3) photographic image requirements were clarified; 4) modernized method of payments; 5) metal dealers can call law enforcement and have them examine their records; 6) retention of records will be five years; 7) softened the liability section and added

an exemption; and 8) added an exemption for individuals who are donating scrap metal.

**Senator Davis** asked how will the language in this legislation affect an electrical distributor. He noticed that the legislation had struck some of the recycling language and then added the definition of a scrap metal business meaning a commercial enterprise that purchases, receives and processes non-ferrous metal property. **Ms. Dean** replied that the concerns may be in the prior definitions. The reason they added the definition "a business that receives and processes recyclables" was to ensure that businesses like the electrical distributor, which are not processing scrap metals into something else, would not be subject to the definition. **Senator Davis** explained that the definition in the Scarp Metal Act did not apply to an electrical distributor in the past. Under the old definition the scrap metal processor maintains a hydraulic baler, shearing device or shredding device for recycling. Under that definition the bill language would not apply to an electrical distributor. Now that language is being eliminated from the bill and instead relying exclusively on the word "processes." The old definition included the word "recycling" because it is more specific. **Ms. Dean** stated the stakeholders struggled over the definition as they tried to make the definition broad enough so that it captured businesses that do not refer to their business as a recycler but buy and sell scrap metal, so that most of those businesses will fall under the definition and must be licensed.

**Michael Kane**, representing the Sheriffs Association, stated the law enforcement focus concerning the definition was to alleviate the pressure on the scrap metal dealer. Law enforcement's intent is not to enforce this law on retail outlets. They look at "process" by the definition a series of actions that produces something or leads to a particular result. When scrap metal dealers receive the metals they process them. **Senator Davis** asked that the definition language be amended so there is a definition of "process" or included that the definition is dealing with scrap product not the various nonferrous metals.

**MOTION:**

**Senator Davis** moved that **H 518** be referred to the 14th Order for amendment. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

**H 455**

**Relating to Fees - Michael Kane**, representing the Sheriffs Association, stated the counties, cities, chiefs, Prosecutors Association, Idaho Attorney General and the Directors of the State Police, Board of Corrections and Pardon and Parole are all in support of this legislation. **Mr. Kane** referenced the hand-outs the Committee had in their packet: 1) the Constitution of the State of Idaho Article 1, Section 22, that deals with rights of crime victims and sets forth the duties of notification (see attachment 1) and 2) 2012 H 595 legislation which spells out the Victim Notification Fund. In order for this legislation to be successful they have come before the Committee today to request an additional \$5 be added to the \$10 fee that was requested in 2012. It is projected that this will raise enough money to maintain the program. This program fulfills a service throughout the State of an electronic victim and witness notification system (VINE) which is an asset to the prosecutors, department of corrections and sheriffs' offices. **Cameron Slater**, Programs Manager for the Idaho Sheriffs Association, said that she manages the VINE program speaking to two components to the VINE program: 1) custody notification which is linked to all their jails and notifies victims when an offender is released from custody and 2) court notification. VINE assists prosecutors and correctional agencies in fulfilling their constitutional duty to assure that victims of crime are notified of changes in the status of offenders. Defendants may register to be notified by phone or e-mail of their court dates to make sure they appear on time. Civil case notification is also tied into the system.

**Mr. Kane** said that in the last year there have been 200,000 notifications in this state and 25,000 new registrations by Idaho crime victims witnesses and concerned parties, the additional \$5 fee to the \$10 will bring in approximately \$500,000 to run the program. This is the most successful criminal justice program that they have put together since the passing of the rights of Crime Victims Amendment. **Senator Hagedorn** asked why does it cost \$15 to send an e-mail or phone call. **Mr. Kane** clarified the monies come from various offenders that have been convicted and the courts can waive the fees. When an offender's status changes it notifies the individuals that have signed up for the information. **Senator Hagedorn** asked for a breakdown of how the fee is divided up. **Mr. Kane** explained that Idaho State Police takes 5 percent of the fee to process the administrative paperwork, the remaining funds go to the Sheriffs Association which pays \$276,000 to the incarceration notification company, \$107,000 for the court notification piece and \$50,000 salary for the program manager. **Vice Chairman Vick** stated he has a frustration with the amount of fees that the State tacks onto felony, misdemeanors and infractions which make it difficult for most of these individuals on probation and parole to pay. He will be voting no on the bill. **Senator Hagedorn** stated he had a problem with contracting with a vendor that was the only contractor that processes these notifications. He asked the Sheriffs Association to check whether there are other vendors who might be able to supply this service. **Senator Davis** echoed **Senator Hagedorn's** concerns with the issue of only one vendor supplying the service for this program. Maybe the new court technology system Odyssey could be programmed to supply this service for the State.

**MOTION:**

**Senator Bock** moved to send **H 455** to the floor with a do pass recommendation. Seconded by **Senator Werk**. The motion carried by **voice vote**. **Vice Chairman Vick** requested that he be recorded as voting **nay**.

**H 434**

**Relating to Punishment for Infraction - Representative Luker** explained that **H 434** is an update to the infraction laws. This legislation updates Idaho law concerning infraction penalties. There are multiple purposes behind the update. First, the law presently gives authority to the Idaho Supreme Court to set infraction penalties. This amendment would restore that function to the Legislature, except where discretionary sentencing is specifically given to the courts. The bill maintains current fixed infraction penalties, but future changes would be up to the Legislature. Second, infraction penalties are now by definition limited to \$100. The bill increases that limit to \$300 to allow for more flexible use of infractions as penalties instead of misdemeanors. Misdemeanors by definition carry the potential for jail time, which requires the provision of a public defender. Changing penalties from misdemeanors to infractions in appropriate cases will reduce costs for and work load upon public defenders. This amendment sets a foundation for future legislative transition of some misdemeanor penalties to infraction penalties. The interim public defense reform committee has endorsed this legislation as one step toward reducing public defender costs and work load in Idaho. The legislation also provides cities and counties flexibility in using infraction penalties rather than misdemeanors in punishing ordinance violations, so as to encourage them to transition from misdemeanor to infraction violations where appropriate.

**Senator Davis** stated the Legislature has intentionally allowed the courts to set the fines for misdemeanors and infractions because they deal with these cases all the time. The courts will write the rules and the Legislature will set the ceiling by establishing not more than this amount. **Representative Luker** responded that if there are infractions that the Legislature does not want to set a policy level they can use Section 4 of the bill and let the court establish those fees. There are a number of infractions, that as a policy body, the Legislature has decided to set a level and that should be a policy matter for this body. When you get into variable sentences for misdemeanors and felonies there is usually a maximum fine amount and the court makes the determination based on the facts of the case. The bill also allows cities and the counties more flexibility to migrate the misdemeanors into infractions when dealing with their ordinances.

**Dan Chadwick**, Executive Director of the Idaho Association of Counties, spoke in support of **H 434**. The public defender interim reform committee met to discuss changes in fines in regards to infractions and misdemeanors. This legislation is the first step by the interim committee to identify and migrate some of the misdemeanors to infractions. The subcommittee has identified approximately 78 misdemeanors, city and county ordinances that should be reclassified as infractions. **Senator Bock** said that as part of the justice reinvestment work that the Committee has accomplished issues came up repeatedly that the State has some misdemeanors that should be infractions. **Chairman Lodge** voiced her concerns that there are many individuals looking at reducing misdemeanors and felonies, and they must make sure that the Legislature proceeds in a unified comprehensive manner rather than piecemeal. The Reinvestment Oversight Committee will also be looking at these reductions over the next five years.

**MOTION:**

**Senator Lakey** moved to send **H 434** to the floor with a due pass recommendation. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**H 463**

**Relating to the Idaho Building Code Act - Representative Luker** stated this legislation decriminalizes building code violations, making them infractions instead of misdemeanors, and providing for a flagrant violator misdemeanor. In the Building Code Subsection 2 "a separate violation is deemed to have occurred with respect to each building not in compliance with this chapter. Each day such a violation constitutes a separate offense". It is appropriate to migrate this into infractions which still gives the Legislature a powerful penalty. **Senator Hagedorn** said on line 29 of the bill it states "a flagrant violator is a person who is convicted to three or more violations under this section when such violations occurred within three years of an additional violation under this section." **Representative Luker** answered that the builder does not have to have the convictions within the three years, but the actual events must occur within the three years. **Senator Bock** stated the bill refers to additional convictions in Subsection 4. If the infraction is not contested are those convictions? **Representative Luker** answered convicted in court. **Senator Bock** replied if someone is convicted of an infraction are the rules applied to infractions such that an admission to infraction can constitute a conviction, and if it can how can you have multiple convictions of an infraction. **Representative Luker** answered the context makes it clear that it is for an infraction because that is the only thing that is left under the section other than flagrant violator violation. **Senator Bock** asked can somebody actually be convicted of an infraction or is a conviction a term that can always be applied to infraction. **Representative Luker** stated he could not tell whether there is a definition of conviction in the code. **Senator Davis** stated it is not just a violation of the Building Code it is a willful violation. A willful violation can take people's lives. In order for the courts to prosecute the builder for a misdemeanor the prosecutor has to prove that the violation is willful not just a violation of the Building Code. If you have a willful violation of the Code why would you not want that to be a misdemeanor? **Representative Luker** stated that this has not been brought up in previous discussions as they drafted the bill. **Senator**



**Davis** asked if the problem of the bill is in Section 2 why not delete it. Subsection 4 states that to be a flagrant violator the builder has to have three or more violations. If the builder has a willful violation on Monday, by Friday the violations are flagrant violations, or if on Monday they get charged with four offenses and they plead to all three. **Representative Luker** answered that the continuing violations do not apply to Subsection 4. If the builder has four separate violations from Monday to Thursday then that is the purpose of Subsection 4. **Senator Davis** said looking at Subsection 2 every day is a separate violation. If the builder willfully violated on Monday does the affect of that violation on Monday then on Tuesday because of Subsection 2 become a continuing willful violation so that by Wednesday the builder has three willful violations under § 39-4126. **Representative Luke** answered no because Subsection 2 is exempted out from Subsection 4 on lines 32 to 34. **Senator Bock** stated that if the builder has a willful violation of the Building Code the building inspector will red tag the project, and no further construction on the project can take place until it meets code. The problem he envisions with this bill is that the Legislature is invading the sovereignty of the cities and counties to protect their residents. **Representative Luker** answered in terms of policy, cities and counties are able to set building code standards because the State allows them that power. The Legislature sets the parameters and then gives the cities and the counties their powers under those parameters. As a broad public policy, are cities and counties given the right tools and are citizens imposed upon with unreasonable regulations? **Senator Bock** replied that the individuals that these policies are imposed upon have the opportunity to vote for the officials who make up the city ordinances and are enforcing the Building Code. **Representative Luker** stated we as a State adopt the Building Code and it is applied by local officials who are not elected.

- MOTION:** **Senator Werk** requested unanimous consent that **H 463** be held to the call of the Chair. There were no objections.
- MOTION:** **Senator Bock** moved to approve the Minutes of February 21, 2014. Seconded by **Senator Werk**. The motion carried by **voice vote**.
- MOTION:** **Senator Lakey** moved to approve the Minutes of February 24, 2014. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.
- ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 3:05 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary